

## DEPARTMENT OF INSURANCE GRANT APPLICATION TRANSMITTAL

Office of the District Attorney, County of San Bernardino, hereby makes application for funds under the *Workers' Compensation Insurance Fraud Program* pursuant to Section 1872.83 of the Insurance Code.

*Contact:* Cindy Monfort, Bureau of Administration  
*Address:* 316 N. Mt. View Avenue – 3<sup>rd</sup> Floor  
San Bernardino, CA 92415-0004  
*Telephone:* (909) 387-3103

(1) <i>Program Title</i>	(2) <i>Grant Period:</i>
Program for Investigation And Prosecution of Workers' Compensation Insurance Fraud	<u><b>July 1, 2004 through June 30, 2005</b></u>
	(3) <i>Grant Amount:</i>

**\$985,268.38**

(4) <i>Program Director</i>	(5) <i>Financial Officer</i>
Jane K. Allen Chief, Bureau of Administration 316 N. Mt. View Ave. – 3 <sup>rd</sup> Floor San Bernardino, CA 92415-0004	Cindy Monfort Supervisor, Bureau of Admin. 316 N. Mt. View Ave.-3 <sup>rd</sup> Floor San Bernardino, C 92415-0004

(6) *District Attorney's Signature*

Name:	<u>MICHAEL A. RAMOS</u>
Title:	DISTRICT ATTORNEY
County:	County of San Bernardino
Address:	316 N. Mt. View Avenue – 3 <sup>rd</sup> Floor San Bernardino, CA 92415-0004
Telephone:	(909) 387-6613
Date:	

## PROGRAM CONTACT FORM

1. Provide the name, title, address and telephone number for the person having day-to-day responsibility for the program.

Name: **TRACY BARTELL**  
Title: Lead Deputy District Attorney  
Address: 412 W. Hospitality Ln.  
San Bernardino, CA 92415-0023

Telephone Number: (909) 891-3527 Fax Number: (909) 891-3540

2. Provide the name, title, address and telephone number of the Chair of the County Board of Supervisors

Name: **DENNIS HANSBERGER**  
Title: Chairperson, Board of Supervisors, San Bernardino County  
Address: 385 North Arrowhead Avenue, 5th Floor  
San Bernardino, CA 92415-0110

Telephone Number: (909) 387-4855 Fax Number: (909) 387-3018

3. Provide the name, title, address and telephone number for the District Attorney's Financial Officer

Name: **CINDY MONFORT**  
Title: Supervisor, Bureau of Administration  
Address: 316 N. Mt. View Avenue  
San Bernardino, CA 92415-0004

Telephone Number: (909) 387-3103 Fax Number: (909) 387-3145

4. Provide the name, title, address and telephone number for the person responsible for the data collection/reporting for the applicant agency.

Name: **CINDY MONFORT**  
Title: Supervisor, Bureau of Administration  
Address: 316 N. Mt. View Avenue  
San Bernardino, CA 92415-0004

Telephone Number: (909) 387-3103 Fax Number: (909) 387-3145

## DEPARTMENT OF INSURANCE

BUDGET CATEGORY AND LINE-ITEM DETAIL		2004-05 PLANNING BUDGET
<b>A. Personal Services - Salaries/Employee Benefits</b>		
All program salary and benefit rates are per the general employees current Memorandum of Understanding with the County of San Bernardino.		
2 DEPUTY DISTRICT ATTORNEY IV (Bartell; Goggin)		231,926.00
3 D.A. SENIOR INVESTIGATOR (Nila; Samaniego; Maxwell)		222,382.00
1 D.A. SUPERVISING INVESTIGATOR (Thompson) @ 95%		85,870.50
1 SECRETARY I (Ellis)		36,416.00
1 CLERK III (New)		28,516.80
<b>TOTAL SALARIES</b>		<b>605,111.30</b>
<b>BENEFITS FOR 8 EMPLOYEES FOR ONE YEAR:</b>		
2 DEPUTY DISTRICT ATTORNEY IV (Bartell; Goggin)		72,054.00
Retirement	17.44% of salary	
Survivor's Benefits	\$76 per year	
Indemnification	7.28% of salary	
Vision Care	\$78 per year	
Short-term Disability	\$364 per year	
Social Security Medicare	1.45% of salary	
Workers' Compensation	.09% of salary	
Life Insurance	\$117 per year	
Indemnification Allowance/Cafeteria Plan	\$4,940 per year	
3 D.A. INVESTIGATOR I (Nila; Samaniego; Maxwell)		95,726.00
Uniform	\$600 per year	
Retirement	20.74% of salary	
Survivor's Benefits	\$76 per year	
Indemnification	5.20% of salary	
Long-Term Disability	\$429 per year	
Vision Care	\$163 per year	
Social Security Medicare	1.45% of salary	
Workers' Compensation	9.07% of salary	
Indemnification Allowance/Cafeteria Plan	\$3,614 per year	
<b>TOTAL SALARIES AND BENEFITS</b>		

# DEPARTMENT OF INSURANCE

BUDGET CATEGORY AND LINE-ITEM DETAIL		2004-05 PLANNING BUDGET
<b>A. Personal Services - Salaries/Employee Benefits</b>		
All program salary and benefit rates are per the general employees current Memorandum of Understanding with the County of San Bernardino.		
1 D.A. INVESTIGATOR II (Thompson)		<b>32,470.00</b>
Uniform	\$540 per year	
Retirement	20.74% of salary	
Survivor's Benefits	\$76 per year	
Indemnification	5.52% of salary	
Vision Care	\$163 per year	
Social Security Medicare	1.45% of salary	
Workers' Compensation	9.15% of salary	
Indemnification Allowance/Cafeteria Plan	\$3,939 per year	
1 SECRETARY (Ellis)		<b>15,596.00</b>
Retirement	17.44% of salary	
Survivor's Benefits	\$76 per year	
Indemnification	7.90% of salary	
Vision Care	\$78 per year	
Short-Term Disability	\$398 per year	
Social Security Medicare	1.45% of salary	
Workers' Compensation	.9% of salary	
Indemnification Allowance/Cafeteria Plan	\$4,960 per year	
1 CLERK III (New)		<b>13,408.00</b>
Retirement	17.44% of salary	
Survivor's Benefits	\$76 per year	
Indemnification	7.9% of salary	
Vision Care	\$78 per year	
Short-Term Disability	\$398 per year	
Social Security Medicare	1.45% of salary	
Workers' Compensation	.9% of salary	
Indemnification Allowance/Cafeteria Plan	\$4,960 per year	
<b>TOTAL</b>	<b>SALARIES AND BENEFITS</b>	

# DEPARTMENT OF INSURANCE

BUDGET CATEGORY AND LINE-ITEM DETAIL	2004-05 PLANNING BUDGET
<b>B. Operating Expenses</b>	
<b>OFFICE EXPENSE</b> Consumable office supplies necessary to administer and run program. Includes postage stamps, software and meeting supplies.	8,052.08
<b>RENT/LEASES STRUCTURE</b>	50,000.00
<b>AUDIT ALLOWANCE</b> Financial and compliance audit per guidelines.	3,000.00
<b>MOTOR POOL</b>	50,000.00
<b>COMMUNICATIONS</b> Communication services and long distance expenses necessary to administer and run program.	15,000.00
<b>MEMBERSHIP</b> \$400. per attorney 800 \$100. per investigator 400 Allowance for membership per Memorandum of Understanding.	1,200.00
<b>TRAINING</b> Training personnel on the Workers' Comp. Fraud system and the investigation and prosecution of Fraud.	5,000.00
<b>SUBSCRIPTIONS AND PUBLICATIONS</b> Legal updates and publications pertaining to Workers' Compensation Insurance Fraud.	3,000.00
<b>MAINTENANCE OF EQUIPMENT</b> Maintenance and service of equipment.	1,000.00
<b>OTHER TRAVEL</b> Funds for training, seminars and meetings for investigative and prosecution staff.	10,000.00
<b>PRIVATE MILEAGE</b>	4,000.00
<b>AIR TRAVEL</b>	3,000.00
<b>SAFETY EQUIPMENT</b>	800.00
<b>TOTAL</b>	<b>CONT'D</b>

**DEPARTMENT OF INSURANCE**

<b>BUDGET CATEGORY AND LINE-ITEM DETAIL</b>	<b>2004-05 PLANNING BUDGET</b>
<b>B. Operating Expenses</b> cont'd	
<b>PROFESSIONAL SERVICES</b> Expert witnesses to conduct evaluations and provide expert testimony in the courtroom.	<b>53,000.00</b>
<b>RENTS/LEASES EQUIPMENT</b>	<b>6,601.00</b>
<b>PRINTING SERVICES</b> Request based on program needs including quick copy costs, printed envelopes and forms.	<b>2,871.00</b>
<b>NON-INVENTORABLE EQUIPMENT</b> To replace office equipment necessary to administer and run the Workers' Compensation program efficiently.	<b>4,000.00</b>
<b>TEMPORARY HELP</b>	<b>20,000.00</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>240,524.08</b>

## DEPARTMENT OF INSURANCE

<b>BUDGET CATEGORY AND LINE-ITEM DETAIL</b>			<b>2004-05 PLANNING BUDGET</b>
<b>C. Equipment</b>			
<b>CATEGORY TOTAL</b>			-
<b>PROJECT TOTAL</b>			<b>1,074,889.38</b>
<b>FUND DISTRIBUTION</b>	<b>STATE INSURANCE</b>	<b>PRIOR YEAR CARRYOVER</b>	
a. Amount of Funds	985,268.38	89,621.00	1,074,889.38
b. Percentage of Funds	100%		100%

## WORKERS' COMPENSATION INSURANCE FRAUD QUALIFICATIONS

1. Describe the District Attorney's experience in investigation and prosecuting workers' compensation insurance fraud. Include any relationships developed or planned with other public or private entities that may be useful to program operations.

The evolution and success of the San Bernardino District Attorney's Unit continued during fiscal year (FY) 2002-2003, notwithstanding significant staffing changes and shifting priorities. Office-wide transfers resulted in the assignment of a veteran prosecutor and thirty-year investigator to the Unit to replace existing staff; both trained quickly and transitioned effortlessly into the day-to-day activities of their coworkers. Concurrently, Unit Staff maintained its successful track record in investigating and prosecuting applicant fraud and premium fraud, while developing protocols and expertise in provider fraud and uninsured employer cases. Staff members continued to participate in training and outreach sessions directed toward industry personnel, law enforcement members, and the voting public, and an increased emphasis on "advertising" our successes in the media has brought increased interest in and attention to our work.

An historical accounting of the growth and concomitant accomplishments of the San Bernardino District Attorney's Workers' Compensation Fraud Unit provides ample evidence of the District Attorney's ongoing commitment to the investigation and prosecution of industrially-related fraud, and the qualifications of those assigned to achieve his goals. In 1993, then District Attorney Dennis Kottmeier initiated the participation of this Office in the grant program with the assignment of a single lawyer and investigator to the Unit; that staff filed a single felony case in the Unit's inaugural year. The next year, twelve cases were filed. In FY1996-97, a second investigator was added to the Unit. All told, from September of 1993 through June of 1997, the Unit Staff prosecuted 53 criminal defendants and accomplished 41 convictions (28 at felony status and 13 at misdemeanor status). In January of 1997, the administration of newly-elected District Attorney Dennis Stout completely revamped the composition of the Unit Staff, resulting in proactive and significant, objectively measurable results in the fight against workers' compensation fraud in San Bernardino County. That year, District Attorney Unit Staff consciously focused on acquiring experience and skill in the investigation and prosecution/resolution of complex, multiple claim/victim applicant fraud cases. In FY1997-98, the collaboration of the staffs of the San Bernardino District Attorney's Unit and Department of Insurance Fraud Division resulted in the filing of 29 felony complaints, 25 arrests, 15 guilty pleas, 2 felony convictions by jury verdict, 12 defendants held to answer for trial after preliminary hearing, and restitution orders totaling \$269,954 and restitution collection/distribution of \$94,697.

During the following (fiscal) year of 1999-2000, the goals of the District Attorney's Staff included solidifying the expertise of its members in handling complex applicant fraud cases, commencing efforts to successfully investigate/prosecute premium fraud cases (particularly in conjunction with D.O.I. Investigators), and improving service in terms of the number of defendants prosecuted, victims served, and restitution returned to victim companies. During that year, 38 felony cases were filed (28 attributable to District Attorney Investigator efforts, 10 attributable to Department of Insurance Fraud Division Investigative efforts); accomplished 35



arrests/surrenders (23 attributable to D.A. Investigator efforts, 10 attributable to D.O.I. Investigator efforts); obtained 23 guilty pleas (19 attributable to D.A. Investigator efforts, 4 attributable to D.O.I. Investigator efforts); and obtained 2 jury verdicts of guilt (1 as a result of a D.A. investigation and 1 as a result of a D.O.I. investigation). The complaints filed by District Attorney Unit Staff included three "very complex" applicant fraud cases, each involving over \$100,000 in restitution, all resolved successfully by way of plea. And the San Bernardino justice system also witnessed its first exposure to premium fraud cases, as seven premium fraud cases were filed against a total of fifteen defendants involving aggregate fraud of well over a half-million-dollars.

The following year (FY2000-2001) bore witness to both objective and intangible gains in the District Attorney's efforts in this specialized fraud unit. Objective measures continued to validate the efficacy of Unit efforts: 25 criminal complaints were filed (21 attributable to D.A. Investigator efforts, 4 attributable to D.O.I. Investigator efforts); 16 arrests or surrenders (14 from D.A. Investigator efforts, 2 from D.O.I. efforts) were accomplished; 24 guilty pleas (18 on cases investigated by D.A. staff and 6 on cases investigated by D.O.I. staff) obtained; and 1 guilty verdict at jury trial (as a result of a D.A. Investigation) earned. The intangible gains occurred in the area of Unit staffing. This was a year of transition, a year in which the District Attorney's Unit Staff was in flux. The Senior Investigator assigned to the Unit in 1997 retired as a result of a medical disability; her replacement (who remains on Unit Staff) quickly provided evidence of his belief that each of the staffing "elements" of the Unit (i.e., attorney, investigator, and clerical) were meant to work cooperatively to accomplish mutually established goals. He was also willing to carry a caseload and participate in the day-to-day investigative functions of the Unit (e.g., arresting defendants). And he has served as the Unit liaison with the supervisory staff of the Fraud Division, which has resulted in a much improved and cooperative relationship with members of the Department. The District Attorney also received the funding requested to assign to the Unit a second Deputy District Attorney. And, perhaps most critically (at least, in retrospect), Investigator Jaime Samaniego was assigned as the Unit's fourth investigator—and what a boon to the Unit's resources he would prove to be.

During the following year (FY2001-02), statistical accomplishments remained relatively constant: 33 felony complaints were filed (25 by D.A. Investigators, 7 by D.O.I. Investigators, 1 by a C.H.P. officer); 30 arrests/surrenders were accomplished (15 by D.A. Investigator staff, 10 by D.O.I. staff); 26 guilty pleas were obtained (19 on cases investigated by D.A. staff, 6 on cases investigated by D.O.I. staff, 1 on the case investigated by the C.H.P.). Equally important, Unit efforts resulted in court ordered restitution in the amount of \$435,224.20, and restitution collected and distributed to 66 victims in the amount of \$226,713.98. Moreover, filings that year demonstrated increased commitment to handling premium fraud cases and our first serious, successful venture into provider fraud investigations/prosecutions. Ace Fraud Division Investigator Sandra Carrizosa filed four premium fraud cases (against a total of seven defendants) involving total loss of over four million dollars. And District Attorney Investigator Samaniego (drawing upon thirty years of experience as an L.A.P.D. Detective) cultivated two disgruntled billing clerks employed by a local chiropractor as informants, and learned of multiple billing fraud schemes being perpetrated by the chiropractor and his office manager. Samaniego's investigation was so thorough that both Defendants pleaded guilty (during this current fiscal year) at arraignment to felony grand theft; over \$40,000 in restitution was paid to ten victims prior to the entry of pleas; both Defendants agreed to pay fines to the D.O.I. Fraud Account totaling \$12,500, and the doctor will pay for five years of his own billing monitoring by ) federal law enforcement expert in medical billing fraud. As a result of his fine work on this

and other workers' compensation fraud investigations, Samaniego was recognized as by the Latino Law Enforcement Officers' Association as Investigator of the Year for 2003.

Finally, our accomplishments as the current fiscal year (FY2002-03) draw to a close validate the developmental plan adopted to maximize the investigative and prosecutorial expertise of staff members. The Unit underwent a number of personnel and systemic changes this year. The core Unit membership remained stable as the Lead Deputy District Attorney, the Supervising Investigator and Investigators Samaniego and Moore, worked on the Unit through the fiscal year. Thankfully, the Unit clerical staff composition also remained constant. Investigator Farrand, a six-year Unit veteran, suffered a severe injury requiring surgery and extensive physical therapy; he was replaced by Investigator Stephen Nelson (a 30-year law enforcement officer). Former Unit D.D.A. Milton Dietsch was transferred to the Juvenile Division, and the Unit received a gift in the assignment of D.D.A. Colleen Goggin in his stead. Goggin is a Senior Deputy District Attorney. Prior to her employment as an Office attorney, she ran the countywide Victim Witness Services Program. Her attorney father ran a successful workers' compensation plaintiff's practice in Michigan during her adolescence. Hence, she possesses a strong working knowledge of the complexities of both the workers' compensation system and the criminal justice system, and a particular sensitivity to victims' rights. She dove into her duties, successfully prosecuting a very old and difficult applicant fraud case to a successful conclusion within two months of her assignment. She has successfully settled most of the cases assigned to her, and is moving the rest of the cases through the system quickly. And the Unit's Lead Deputy, tired of private attorneys continuing three premium fraud cases for over a year prior to preliminary hearing, presented all three cases to the Grand Jury in the same week. The Grand Jury returned the indictments as requested, and now all three cases are in trial-ready posture. In addition, she and Fraud Division Investigator Sandra Carrizosa are pursuing their first money laundering case (against four defendants, two of whom are defendants in one of the Grand Jury cases) involving the illegal funneling of close to a million dollars through a local Mexican restaurant to facilitate the commission of grand theft and premium fraud,

The Unit statistics for FY2002-2003 (as recounted in Qualifications Sections 2-6) demonstrate that this Unit continued producing excellent results even as the staff underwent change, and the nature of the investigations and prosecutions undertaken expanded. This year, San Bernardino District Attorney Investigators conducted 90 investigations (another 11 were conducted by D.O.I. Fraud Division Investigators and submitted to the District Attorney for filing consideration); a total of 33 complaints were filed (25 as a result of District Attorney Investigator Investigations and 8 filed by the Fraud Division Investigators); a total of 31 convictions were obtained (25 based on cases investigated and filed by District Attorney Investigators and 6 resulting from cases filed by Fraud Division Investigators); \$170,805.52 in victim restitution was court-ordered and \$218,977.02 in restitution was collected and distributed as a result of Unit efforts. That annual Unit productivity maintained parity with that of prior years is significant, given the changes in both the attorney and investigator staff, as well as the fact that Investigator Samaniego spent virtually three-quarters of the year completing a two-defendant provider fraud case. The philosophy and goal of the District Attorney has always been to gradually build the Staff's expertise in investigating and prosecuting the various types of industrial fraud, while maintaining a strong prosecutorial presence in terms of cases filed/arrests made/convictions obtained, in order to both serve our victims and deter potential fraudulent conduct. Given our successes in the various activities we have undertaken, we believe we are meeting the mandate set forth by the District Attorney.

Members of the Unit Staff continue to extend their efforts beyond the reactive and into the proactive. The Lead Deputy taught both a beginning and an advanced session at the annual training conference of the Southern California Fraud Investigator's Association. Topics covered included W.C.A.B. Depositions and Criminal Prosecutions and Jurisdictional, Materiality and Discovery Issues in Workers' Compensation Fraud Cases. She also participated in training efforts directed toward claims examiners (she addressed approximately 50 examiners of the Southern California Risk Management Association regarding the role of examiners in criminal fraud prosecutions) and special unit investigators (with a presentation to approximately 50 investigators stationed state-wide for C.N.A. Insurance Company). In an outreach effort seeking case referrals, she addressed approximately 50 members of the local Applicant's Attorney's Association regarding our effort to undertake criminal prosecution of uninsured employers. And she was invited by State Senator Pete Knight and Assemblywoman Sharon Runner to present at a Town Hall meeting held in Victorville regarding, "The California Workers' Compensation System: Costs, Fraud and Proposed Solutions". (This program was recorded and played six times during the weekend following the meeting on the desert's Clear Channel radio stations.) The Unit Staff continued to participate in on-going efforts to train and network with members of the insurance industry by co-hosting monthly consortium meetings featuring thirty-minute training sessions (on topics including Presenting Premium Fraud Cases to the Grand Jury; The Provisions of A.B. 749; and Thoughts and Tips Regarding WCAB Depositions and Related Criminal Prosecutions), followed by coffee and round-table conversation.

Our outreach efforts extend beyond speaking engagements. We continue to "paper" unemployment offices, temporary agencies and the Workers' Compensation Appeals Board with our English/Spanish pamphlets explaining the rights and responsibilities of the various participants in the worker's compensation system. We publicize every arrest, conviction and sentencing with press releases issued to the seven newspapers with wide circulation in this county. (See Attachment E.)

We remain cognizant of the importance of creating and maintaining productive, respectful relationships with those other agencies directly or indirectly involved in fighting workers' compensation fraud. The District Attorney has long been concerned that the largest employer in the County—the County itself—has submitted a paucity of suspected fraudulent complaints, notwithstanding repeated overtures from and training sessions conducted by Unit Staff. We recently reinitiated overtures with County Risk Management, and participated in a productive meeting with Risk Management, Sheriff's Department and County Counsel personnel, designed to encourage fraud referrals to the Unit. An action plan of referrals and training sessions has been scheduled, and follow-up meetings involving supervisory personnel are set at sixty-day intervals to ensure that this relationship will flourish. The Lead Deputy has also established contact with the Community Service Officers of local police departments and the County Sheriff's Department, and offered to participate in the Business Community Training Academies hosted by each of these departments. Thus far, two prominent West County police departments have scheduled training sessions taught by the Lead Deputy during the next, regularly scheduled business academy.

Described more fully in the Program Strategy (Section 7) are our efforts as tri-hosts of the Workers' Compensation Fraud Consortium, an effort we execute in conjunction with the Riverside District Attorney's Office and the local Fraud Division Office of the Department of Insurance. This group meets monthly; the membership includes District Attorneys from Los Angeles, Riverside, Orange and San Bernardino Counties; members of special investigative units from insurance companies including Golden Eagle, SCIF, and Republic Indemnity; staff from self-insured entities, particularly from local school districts; private investigation firms; staff from third party administrators; insurance defense attorneys; and others. Likewise, our relationship with the staff (particularly the auditors) of the local Employment Development Department Office has evolved as that agency's criminal investigators submit cases for prosecution. We anticipate co-hosting an all-day training session on premium fraud investigations, featuring two stellar agents from the National Insurance Crime Bureau. The Lead Deputy also maintains a friendly and mutually beneficial professional business relationship with the Coordinator of the Legal Nurse Consultant program at the University of California (Riverside), and continues to recruit students from that program to serve as unpaid interns on the Unit. And we continue to cultivate positive relationships with staff of other county departments and agencies who perform efforts ancillary to allowing us to complete our mandate—i.e., probation, collections, volunteer services, etc.

Finally, the District Attorney continues to exploit the most valuable, available resource to fight workers' compensation fraud—the superiority of his staff. Ms. Goggin's assignment as the second Unit attorney has already proven extremely beneficial. Her excellent reputation as a knowledgeable, hard-working and successful trial attorney preceded her, resulting in the early settlement of most of her assigned cases on extremely favorable prosecution terms. She is also so personable and willing to assist that industry personnel and Fraud Division Investigators consult with her frequently. The stability afforded to the investigative staff by the continuing presence of Senior Investigator Thompson and the experience and expertise provided by Investigator Jaime Samaniego have proven solid during this year of fluidity on the investigative staff. And the unfailing competence and organizational skills of the Unit's clerical staff are without equal in this District Attorneys' Office. The District Attorney's experience in investigating and prosecution workers' compensation insurance fraud underpins his belief that the success of his program begins and ends with dedicated and hard-working staff. Therefore, his efforts will be directed toward maintaining the excellence his staff has demonstrated.

## QUALIFICATIONS (Continued)

If the District Attorney has received a grant from CDI prior to his application, list only those achievements made possible by the use of grant funds. Also complete the Summary of closed and pending prosecutions for FY 2002-2003. A page listing program achievements realized with the use of other funds may be included in the Appendix.

1. In FY 1999-00, 59 investigations were initiated and involved an average of 1.1 identified suspects per investigation. In FY 2000-2001, 101 investigations were initiated and involved an average of 1.1 identified suspects per investigations. From July 1, 2001 to June 15, 2002, 47 investigations were initiated and involved an average of 1.05 identified suspects per investigation. From July 1, 2002 to June 15, 2003, 101 investigations were initiated and involved an average of 1.01 identified suspects per investigation.

2. In FY 1999-00, 38 warrants/indictments were issued involving an average of 1.24 suspects and/or defendants. In FY 2000-2001, 25 warrants/indictments were issued, involving an average of 1.0 suspects and/or defendants. From July 1, 2001 to June 15, 2002, 33 warrants/indictments were issued involving an average of 36 suspects and/or defendants. From July 1, 2002 to June 15, 2003, 33 warrants/indictments were issued involving an average of 1.2 suspects and/or defendants.

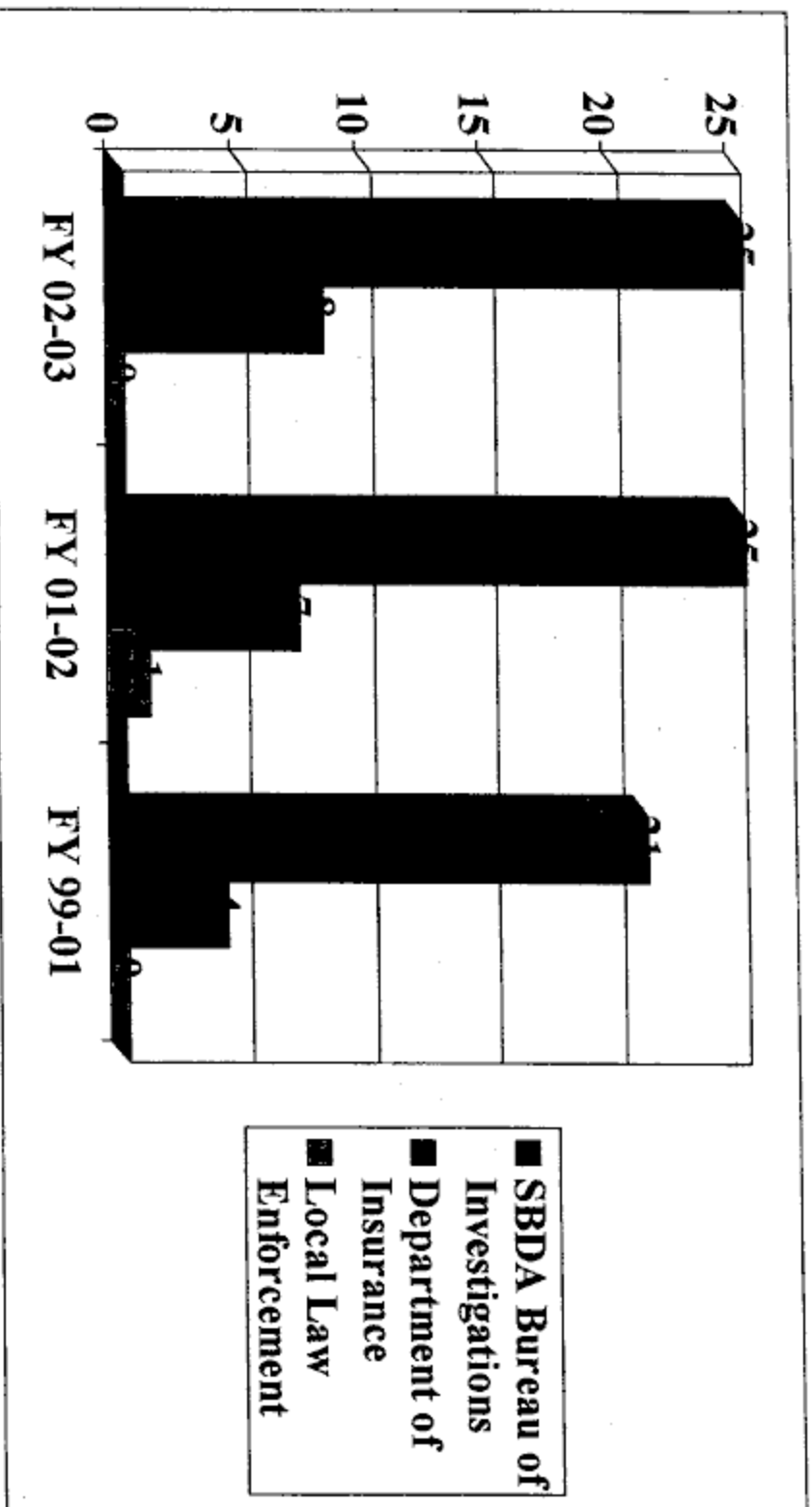
3. In FY 1999-00, 31 arrests and 4 surrenders were made. In FY 2000-2001, 23 arrests and 1 surrender were made. From July 1, 2001 to June 15, 2002, 25 arrests and 3 surrenders were made. From July 1, 2002 to June 15, 2003, 29 arrests and 3 surrenders were made.

4. In FY 1999-00, 25 convictions were obtained involving 25 defendants. Of these convictions, 2 were obtained by trial verdict and 23 were obtained by plea or settlement. In FY 2000-2001, 27 convictions were obtained involving 27 defendants. Of these convictions, 1 was obtained by trial verdict and 26 were obtained by plea or settlement. From July 1, 2001 to June 15, 2002, 26 convictions were obtained involving 26 defendants. Of these convictions, 0 was obtained by trial verdict and 26 were obtained by plea or settlement. From July 1, 2002 to June 15, 2003 31 convictions were obtained involving 31 defendants. Of these convictions, 2 were obtained by trial verdict and 29 were obtained by plea or settlement.

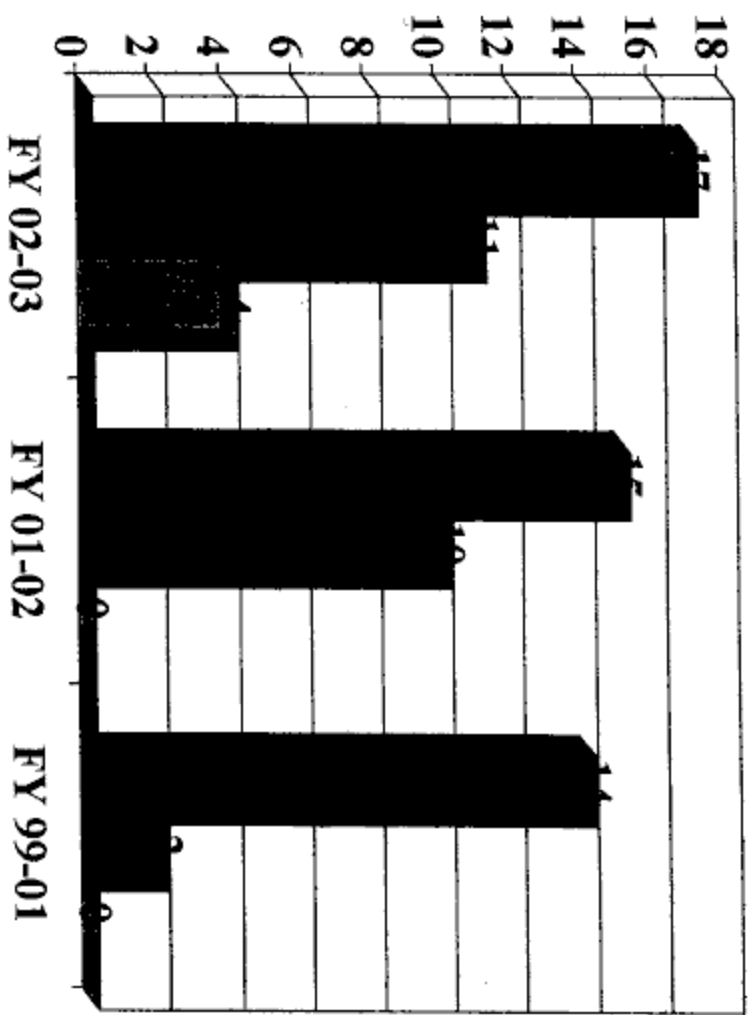
5. In FY 1999-00, 14 defendants were ordered to pay \$9,422.72 in fines and penalty assessments. Of this amount, \$9,422.72 was collected from 27 defendants. In FY 2000-2001, 22 defendants were ordered to pay \$4,290 in fines and penalty assessments. Of this amount, \$2,880 was collected from 25 defendants. From July 1, 2001 to June 15, 2002, 26 defendants were ordered to pay \$4,730 in fines and penalty assessments. Of this amount, \$3,086 was collected from 28 defendants. From July 1, 2002 to June 15, 2003, 17 defendants were ordered to pay \$3,740 in fines and penalty assessments. Of this amount, \$4,475 was collected from 32 defendants.

6. In FY 1999-00, 17 defendants were ordered to pay restitution in the amount of \$476,755.87 to victims. Of this amount, \$119,328.93 was collected from 42 defendants, benefiting 45 victims. In FY 2000-2001, 21 defendants were ordered to pay restitution in the amount of \$599,521.22 to victims. Of this amount \$137,802.99 was collected from 56 defendants, benefiting 63 victims. From July 1, 2001 to June 15, 2002, 27 defendants were ordered to pay restitution in the amount of \$435,224.20 to 32 victims. Of this amount, \$226,713.98 was collected from 60 defendants benefiting 66 victims. From July 1, 2002 to June 15, 2003, 17 defendants were ordered to pay restitution in the amount of \$170,805.52. Of this amount, \$218,977.02 was collected from 65 defendants, benefiting 81 victims.

# **San Bernardino County Workers' Compensation Insurance Fraud Complaints Filed**



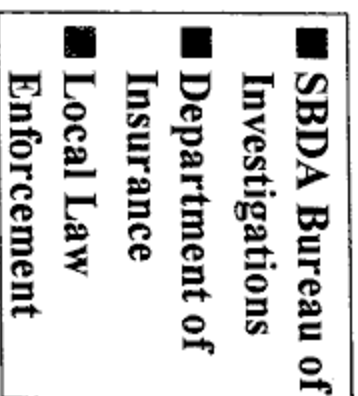
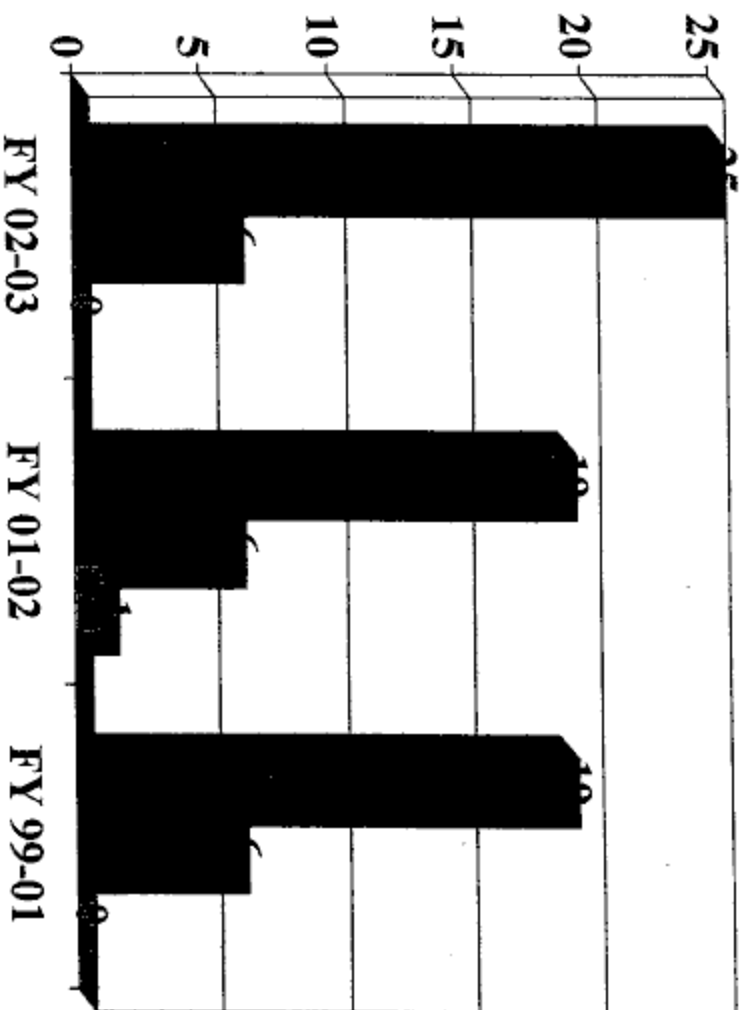
# San Bernardino County Workers' Compensation Insurance Fraud Arrests/Surrenders



- SBD A Bureau of Investigations
- Department of Insurance
- Local Law Enforcement



# **San Bernardino County Workers' Compensation Insurance Fraud Convictions**



## QUALIFICATIONS (CONTINUED)

7. List the name of the program's prosecutors and investigations. Under the name of each staff member:

- A. List the percentage of time devoted to the program.
- B. Indicate the length of time the prosecutor or investigator has been assigned to the program.
- C. List all of the cases (by suspect name or case number) handled by the prosecutor or investigator during fiscal year 2002-2003; include the date of assignment and a brief case summary. Please also include those cases that were prosecuted without positive result.

### Program Investigator

Darryl Thompson, Investigator II (Supervising Investigator).

Tenure on Unit/with program: December 18, 2000-present.

Percentage of time devoted to program: 98%.

### List of Investigations: Fiscal Year 2002-2003.

Defendant Scott Everett (Case No. FVI015473).

Investigation Assigned: 5-23-02. Investigation Completed: 7-19-02.

Everett was employed as a laborer for Southern California Components in Hesperia. On 5-6-00, he reported that he suffered a work-related back injury; he was declared TTD as of that date. He never returned to work for Southern California Components. However, he did work from 6-16-00 until 7-8-00 as a bouncer at (no doubt) an "upstanding" establishment known as "The Gee Spot". In fact, the only reason he stopped working at "Gee Spot" is because he wanted to be paid in cash so he could continue to receive his workers' compensation benefits, and the bookkeeper refused his request. During the course of the claim, three medical providers inquired as to his work status and he told them that, since the date of injury, he was not working/had not returned to work/was not performing any work duties. An interview with the bookkeeper at "Gee Spot" confirmed Everett's employment and receipt of wages during the time he received TTD. Everett pleaded guilty to one felony violation of P.C. 487(a); he was sentenced to probation, payment of restitution of \$1,263.62 to Republic Indemnity and community service.

Defendant Gregory Allen (Case No. FSB036550).

Investigation Assigned: 8-26-02. Investigation Completed: 10-17-02.

Defendant had worked for Starcrest Products for less than two months when he reported that, while lifting a box, he injured his back and right upper/lower extremities. During his deposition, he testified that, since the date of injury, he had "just barely" worked on his car; he neither washed nor cleaned his auto; he had done no "bending, stooping or squatting"; had not "taken out or dumped the trash"; and had done nothing but stay home and play video games; that the only household chore he had done was very light dusting because "that is all his wife will let him do". The sub rosa shows Allen performing all of the activities he testified under oath he was unable to do and had not done. Allen pleaded guilty to one felony violation of I.C. 1871.4. He was sentenced to a 5 year probationary term, 90 days in jail, and payment of \$16,383 in restitution to HHH American.

Defendant Amir Mansouri (Case No. FSB037296).

Investigation Assigned: 10-11-02. Investigation Completed: 12-11-02.

Defendant reported he fell down stairs and hurt his lower back down to his hip bone. He later expanded his injury list to include his neck, right shoulder, right elbow and legs. Despite questioning by examining physicians, he failed to disclose a prior workers' compensation claim he filed in 1996 while employed by Home Base. In that claim, he reported that he had suffered injuries to his back, neck, lower extremities, and psyche resulting from—here's an irony—falling down a flight of stairs. The Defendant also failed to disclose his involvement in and injuries resulting from a prior traffic accident. On April 30, 2003, Mansouri paid \$900.00 (full restitution) to Travelers; thereafter, he pleaded guilty to one misdemeanor violation of P.C. 487(a), and was placed on probation including terms and conditions that he pay a victim fine and serve 75 hours community service.

Defendant Steven Foster (Case No. FSB038003).

Investigation Assigned: 1-31-02. Investigation Completed: 2-6-03.

A 1981 motorcycle accident resulted in Foster suffering the amputation of his left leg below the knee. He became a self-employed "plasterer", but went to work as a custodian for the Walnut Unified School District when his kids came along. After less than a year of employment, he was involved in another "accident" when he broke up some skateboarding students, resulting in continued medical treatment. (The same doctor who treated him for the 1981 incident diagnosed a sprain and kept putting him on "one more week of TTD"—as if he thought the problem should have resolved.) During a deposition, Defendant testified that he couldn't do anything except attend his physical therapy appointments and go to the store. He also testified he could no longer do plastering. He accepted and cashed three TTD checks clearly marked that, by cashing, he affirmed that he had reported all income/wages to SCRMA. Defendant was videotaped loading up his vehicle for a family vacation and also working on a residential construction job (for which the owner of the residence said he paid Foster \$3,400). A case alleging the lies told to doctors was filed. Thereafter, Foster lied during his W.C. A.B. deposition regarding the same facts, resulting in the filing of a second complaint. Foster pleaded guilty to one felony violation of I.C. 1871.4; plea terms included a 90 days in jail and \$3,000 restitution. Sentencing is set in July of 2003.

Defendant Deborah Doss (Case No. FSB039292).

Investigation Assigned: 4-14-03. Investigation Completed: 5-7-03.

On 10-16-00, Doss was hired as a phlebotomist for Unilab. She alleged that on 2-27-02, she was summoned to assist a co-worker attempting to draw blood from a child. Doss said that the child kicked her in her left knee. During medical treatment and at deposition, she stated that she had had no prior treatment to her back or left lower extremity and that she had filed no prior workers' compensation claims. In fact, she had been treated for both body parts and had filed three prior workers' compensation cases for which she had received settlements. Thompson filed a 7-felony count complaint against Doss on May 7, 2003. Doss surrendered herself into custody on the warrant, posted bail, and will be arraigned in late July.

Defendant Steve Taylor (Case No. FWV028196).

Investigation Assigned: 1-6-03. Investigation Completed: 5-13-03.

Taylor, a Rancho Cucamonga fireman, suffered a back injury in 1996; the five-year statute of limitations on industrial injuries had expired when he visited his doctor in 2001, so the good doctor reported that Taylor suffered an (new) unwitnessed injury to his back when lifting his gear. After a year or so of treatment, Taylor came to the doctor's office under the influence of drugs, and demanded a prescription refill of Oxycontin. His demand was denied. The following day, a

member of the doctor's office staff saw Taylor stealing blank prescription pads from the doctor's office. The claims examiner initiated an investigation, which revealed that Taylor had been using forged prescription chits to obtain narcotics from several providers (who did not know about each other) and had been paying for them out-of-pocket. His workers' compensation doctor determined he was addicted. Because he "acquired" his addiction as a result of his industrial injury, the City of Rancho Cucamonga is on the hook for his substance abuse rehabilitation to the tune of \$25,000! On June 5, Thompson filed a 6-felony count complaint against Taylor, whom he arrested and booked the following day.

Defendant Jesus Navarro (Case No. FVI 017186).

Investigation Assigned: 3-18-03. Investigation Completed: 6-2-03.

On 6-22-01, Defendant was hired by Southern California Components. In early November, he alleged that he suffered an industrial injury to his left hand and fingers when he hit the hand with a hammer. His claim was accepted and Navarro was afforded medical treatment including surgery. In February, he was ultimately cleared to return to work (light duty). In short order, the Defendant hired a lawyer and began treating with Dr. Kenneth Lay, who declared him TTD and requested permission to perform (another) surgery. Defendant testified at his deposition on 1-10-03 that he had neither worked nor received income from additional sources while receiving TTD from Republic; sub rosa and an interview with the owner of Normwackett Auto Body & Repair established that he worked at that establishment in November of 2002. On June 9, Thompson filed a felony complaint against Navarro, whom he arrested on 6-12-03. Navarro currently faces preliminary hearing.

Suspect Jose Inez Marquez.

Investigation Assigned: 7-30-02. Investigation Completed: 8-19-02.

Marquez filed a claim against his employer, who (thereafter) alleged that Marquez had received TTD benefits while simultaneously working for a competitor. Investigator Thompson interviewed the owner of the competing business, who produced an affidavit verifying that Marquez had never been an employee. Marquez' former employer also alleged that Marquez had illegally received welfare payments while receiving TTD; Thompson verified with the District Attorney's Welfare Fraud Investigations Unit that Marquez had not received benefits (through either the Welfare Dept. or EDD) during the time period he received TTD. Therefore, as no crime was committed, this case was respectfully rejected. (Victim: American Home Assurance, Claim No.052-131025).

Suspects (Attorney) John Kuntz and (Adjuster) Jason Rawls.

Investigation Assigned: December, 2001. Investigation Completed: 3-18-03.

Former Rialto Police Lt. Jonathan Menezes complained to the District Attorney's Office regarding irregularities and alleged fraud in the administration of his workers' compensation claim against the City. Preliminary investigation indicated that Attorney Kuntz (who almost exclusively represents the City of Rialto in W.C.A.B. proceedings) and the claims examiner responsible for adjusting Menezes' claim had denied Menezes his right to vocational rehabilitation benefits and that the examiner had lied about that denial under oath. We learned that Menezes' sister-in-law, the Information & Assistance Officer at the local W.C.A.B., told Menezes that one of the local judges had granted at least eight L.C. 132 claims of Rialto employees. Investigation established that the fraudulent statements (if any) were made in Riverside County. Moreover, when Investigator Thompson attempted to interview W.C.A.B. personnel regarding Ms. Menezes' statements, the presiding judge refused access to his staff for interview purposes, and Ms. Menezes denied making the statements we were led to believe she had made. (Victim: Claimant Menezes).

### **Program Investigator**

Jay Farrand, Investigator I.

Tenure on Unit/with program: April 25, 1998-November 25, 2002.

Percentage of time devoted to program: 100%.

### **List of Investigations: Fiscal Year 2002-2003**

Defendant Tamara Adams (Case No. FSB035900).

Investigation Assigned: 5-1-02. Investigation Completed: 8-27-02.

Adams resigned from a construction sales job because the work was too strenuous. During her exit interview, she completed a form indicating that she had sustained no industrial injuries during her employ. She then filed a post-termination claim, alleging that she had suffered low back and left leg injuries due to continuous trauma. She told doctors and testified at deposition that she had had no prior back problems, and that she had not been employed since leaving the construction firm. Prior medical records established a history of back problems since age 13...and investigation revealed that she had earned over \$2800 working for a real estate sales company since she had left the construction firm. In August of 2002, Investigator Farrand filed a 10-felony count complaint against Adams, who was arrested in August. On 3-18-03, Adams appeared with a check for restitution in full (\$10,480 payable to AIGCS); thereafter, she pleaded guilty to one misdemeanor violation of I.C. 1871.4(a)(2); she was placed on probation, ordered to pay a fine and perform community service.

Defendant Art Garcia (Case No. FSB036234).

Investigation Assigned: 7-30-02. Investigation Completed: 9-23-02.

Garcia was employed by the Fontana Unified School District as a campus security guard. He filed a DWC-1 dated 4-22-02, alleging that on 3-22-02, he injured his left knee while running to break up four fighting students. He was off work (and receiving TTD) for a significant period of time, and underwent arthroscopic surgery on 5-20-02 to correct his problem. He provided a written statement to an investigator thereafter swearing he had not worked since his surgery, but stayed home, and read, wrote, and did his strengthening exercises. Little did he know that four days of sub rosa video shot during the time period in question showed him shopping for and unloading construction materials, and providing roofing estimates for a company named "Cal Star Roofing". On 9-24-02, Investigator Farrand filed a five-felony count complaint against Garcia. He is currently out-of-custody, pending disposition or preliminary hearing.

### **Program Investigator**

Ron Moore, Investigator I.

Tenure on Unit/With Program: January 4, 2000-June 30, 2003.

Percentage of time devoted to program: 97%.

### **List of Investigations: Fiscal Year 2002-2003**

Defendant Maria Molak (Case No. FSB036431).

Investigation Assigned: 7-25-02. Investigation Completed: 10-5-02.

Molak had worked about ten years as a company controller when she suffered a witnessed injury to her right shoulder/arm while reaching for a box of records. She neither reported the injury nor claimed benefits for a while because "she was not aware that she was entitled to benefits". She resigned, subsequently filed a claim, and received benefits. She repeatedly told her treating physician, the defense QME, and an investigator that she was not working. MUCH sub rosa established that she worked as a bartender/food manager at two of the Pomona restaurants owned

by her and her significant other, and that her physical abilities exceeded her representations. On October 6, 2002, Investigator Moore filed a felony complaint against Molak, whom he arrested on November 1. This case is pending disposition/preliminary hearing.

Defendant Kristin Coats (Case No. FSB036723).

Investigation Assigned: 9-30-02. Investigation Completed: 10-30-02.

In February, Coates was hired as a clerk by a Veteran's Home. By April, she was enduring a difficult pregnancy; had used up all of her sick leave/vacation time; had moved into a new home; stated that her husband did not earn enough to support them; had changed her "treating physician" designation; and had inquired of her personnel supervisor how long she had to wait to report a workers' compensation claim. In June, she reported that she fell off of a stool in a storage closet. She was declared TTD due to this injury for months, because "she couldn't be treated due to her pregnancy". She ultimately had to return to work, but quickly reported another injury—which is the subject of this criminal lawsuit. In January, she reported that, in December, she had suffered injuries to her right hand, wrist, arm, and fingers. She never reported this injury or any of the pain involved to any of the medical doctors who had treated her during December and January for the knee injury—in fact, she denied suffering any prior or subsequent claims to these doctors. Most telling, during one appointment for the latter "injury", she described her extensive pain and held her right arm up to her chest as if incapacitated. She was videotaped leaving the medical office continuing the farce, and then caught using the arm—in drive-throughs, to run errands, etc. Investigator Moore filed a felony complaint against Coats in October; this case is still pending disposition or preliminary hearing.

Defendant Lavonne Grondwalski (Case No. FSB038407).

Investigation Assigned: 1-21-03. Investigation Completed: 2-7-03.

Defendant worked about six months as a certified nurse's assistant for San Bernardino Community Hospital when she reported an industrial injury. She gave differing versions regarding the circumstances under which she acquired the injury. She was afforded medical care and placed on TTD for a while, then modified duty, then returned to TTD status where she remains to this day. The claim was admitted as to her back. However, just as she was to be declared permanent and stationary as to the back, she reported that she hurt her left shoulder and received treatment. The claim was denied as to her left shoulder. Private investigators got a couple of days of great sub rosa of the Defendant moving furniture and carrying items during a yard sale, and also carrying cages and animals to and from Petsmart. At her deposition, she was asked very specific questions regarding the contents of the sub rosa, and she denied doing the activities. Investigator Moore filed a 12-felony count complaint against Grondwalski. On June 5, she pleaded guilty to one felony violation of I.C. 1871.4; terms of the plea include felony probation, 90 days in jail, and payment of \$10,036.66 to victim Octagon Risk Management.

Defendant Jose Rodriguez (Case No. FSB039283).

Investigation Assigned: 12-10-02. Investigation Completed: 5-7-03.

Rodriguez "labored" for Universal Truss for about four months before reporting a shoulder injury. He was returned to work after a month. (Not so surprisingly), he reported a related back injury, found a new lawyer and doctor, and was declared TTD. He remained on TTD status from 1-14-02 though 10-22-02. Unknown to the insurance carrier, Rodriguez had returned to work for the insured in January, and collected wages (concurrent to his receipt of TTD) for nearly a year. He also lied repeatedly at his deposition regarding his lack of employment and income during the time he received TTD. Rodriguez pleaded guilty to a

felony violation of P.C. 487(A); plea terms included felony probation, 90 days in jail and payment of \$7,000 in restitution.

Defendant Darrell Higgins (Case No. FSB040043)

Investigation Assigned: 6-2-03. Investigation Completed: 6-24-03.

Higgins was employed by Ugly Duckling as a mechanic. He was repeatedly warned that he needed to be properly licensed by the California Department of Motor Vehicles. During the last warning, Higgins was told that if not properly licensed by the "drop dead date", he would be fired. By the specified date, he was not properly licensed, and was told by supervisor that he was fired, but "that he could work out the day". Here's one for Ripley's: he reported that, as he was cleaning up his work area that day, he slipped and fell and hurt his finger, back and knee. The claim was accepted, medical treatment afforded, and he was found to be a QIW and entitled to VRMA. Higgins asked to go to training at night. Sub rosa proved he was working as a mechanic during the day (without reporting to adjuster—so they did not get their credit on the VRMA payments). Investigation revealed that he had been in an auto collision a year before this injury; as a result, he claimed an injury to his back, and was treated by a chiropractor to the tune of thousands of dollars. Naturally, he denied to any of his doctors and the investigator in the current case that he had any prior history of back injury. On June 30, Investigator Moore filed a 6-felony count complaint against Higgins, and obtained a warrant for his arrest.

Suspect: Joseph Peterson.

Investigation Assigned: 10-5-02. Investigation Completed: 6-9-03.

Peterson worked for Wilson Towing between 5-13-02 and 6-11-02, and between 6-21-02 and 7-12. On 7-15, he showed up at the hospital and reported that on 7-12, he injured his right wrist and ankle when he fell. (He provided no notice to the employer.) He eventually showed up at work and was told that he needed a doctor's note to return to work. Thereafter, he called his supervisor and said he was moving to Banning, then Missouri. On 8-2, he began working for Allied Transportation, and worked until 8-22. On 8-23, rumor circulated that several employees were scheduled for termination, and ("suddenly and without warning"), he reported an injury to his left knee in an unwitnessed injury, which is unsupported by the objective evidence (x-ray). Petersen has been convicted of both felony arson and felony statutory rape, and was placed on probation on both of those cases. Unfortunately, based on the results of Investigator Moore's investigation, this case proved unsuitable for criminal prosecution. The "Allied" claim had been the subject of an AOE/COE investigation and report, which Moore was not given by SCIF (despite repeated requests) until he had completed his investigation. This report established that Peterson's "Allied" claim had been witnessed and promptly and properly reported. As the "Wilson" claim had been filed on the theory of "bootstrapping" it onto the "Allied" claim (due to the similarity in claims) and was not provable beyond a reasonable doubt on its own, the entire case was formally rejected on 6-9-03.

Suspect: Warren Montalto

Investigation Assigned: 11-16-01. Investigation Completed: 12-18-02.

In 1994, while employed as a factory manager at U.S. Alcohol Testing, Montalto claimed he suffered back, neck and left leg injuries when a machine fell on him. He has been on the insurance dole ever since. During his deposition and to medical doctors, he consistently denied employment in any form since his 1994 injury. Initial investigation indicated that, since July of 1999, he had been employed as a consultant by (and had been receiving \$5,000 monthly from) a Canadian concern. The manager of that concern forwarded an affidavit swearing that Montalto

received income from his company only during time periods excluding TTD payments. Therefore, the case was rejected for lack of proof.

#### **Program Investigator**

Jaime Samaniego, Investigator I.

Tenure on Unit/with program: November 6, 2000-present.

Percentage of time devoted to program: 100%.

#### **List of Investigations: Fiscal Year 2002-2003**

Defendant Elizabeth Leyva (Case Nos. FSB033638 & FWV026407)

Investigation Assigned: 5-29-01/ 9-15-02. Investigation Completed: 2-15-02 /10-22-02.

Leyva is a 36-year-old single mother of 4 kids who has worked a total of about 18 months in her life. She was hired out of an ROP program by Krispy Kreme to push donuts. She claimed extensive injuries to her back, chest and knee (necessitating surgery) as a result of an incident wherein she claimed a sewer pipe shoved a 100-pound donut cart into her, causing her to black out and double over with pain for 2 minutes. Little did she know that Krispy Kreme has a CCTV security system, and that the incident was preserved on film—and showed that the cart only minimally touched Leyva. While Leyva was out of custody on bail on the insurance fraud case, she stole about \$500 of merchandise from a Montclair vendor; she was arrested and cited out for P.C. 488. Thankfully, the Unit Secretary “discovered” this case before Leyva pleaded guilty, and Investigator Samaniego filed a felony P.C. 666 complaint (Petty Theft with Prior Theft Conviction). In April of 2003, both parties stipulated to a “court” trial (that is, trial by judge) as to the P.C. 666 case. In short order, Judge Uhler found Leyva guilty and remanded her into custody. I dismissed the insurance fraud case, as Judge Uhler made it clear (rightfully so) that the Deft. would not be sentenced to additional time in custody in the event of a guilty verdict (Leyva had no prior record), and no restitution was owed as this was a denied claim. In May, Leyva was placed on a five-year probationary term, and ordered to serve 270 days in custody as a term of probation.

Defendants Robert Strohbach, D.C. and Gloria Escoto (Case No. FSB038768).

Investigation Assigned: October, 2001. Investigation Completed: March, 2003.

Strohbach runs a chiropractic clinic in Fontana and Escoto is his office manager. Based on information provided by two of the clerical staff that the Doctor and Escoto were billing for services not provided and up-coding, Investigator Samaniego authored and served a search warrant for the office premises. He seized paper files and computer hard drives that contained proof of the allegations. All told, Investigator Samaniego documented about \$40,000 of fraud committed against ten victim companies. In April, Investigator Samaniego filed a complaint charging both Strohbach and Escoto with committing grand theft. In April and May, Strohbach and Escoto (respectively) pleaded guilty to felony P.C. 487. Strohbach made total restitution, in the form of cashiers’ checks, prior to the acceptance of his plea. His plea agreement guarantees a five-year probationary period, enforced billing monitoring paid for by the Defendant (with oversight by both the Court and the District Attorney), community service and a \$10,000 fine payable to the DOI Fraud Account. Escoto’s plea agreement contemplates a three-year probationary term, 100 hours of community service and a \$2,500 fine to the DOI Fraud Account.

Defendant Jamie Stewart (Case No. FSB039181).

Investigation Assigned: 2-1-03. Investigation Completed: 4-30-03.



Stewart was the subject of a felony stolen property complaint filed by the District Attorney's general prosecution lawyers after he was caught in a customer's residence laying tile that he had stolen from his employer. When arrested, he was receiving TTD from Gallagher Bassett, based upon a back injury he allegedly suffered in April of 2001. Investigation revealed that he made a habit of doing side jobs and receiving money while receiving TTD. He also lied during his deposition about receiving additional income while receiving TTD. Investigator Samaniego filed a multi-felony count complaint against Stewart, who now has three outstanding felony cases: two in San Bernardino County (the insurance fraud and stolen property cases) as well as one in Riverside County (a felony **probation** case on which he pleaded guilty to spousal assault by means of a caustic chemical). Our efforts are directed toward sending Stewart to prison. Investigator Samaniego filed a 9-felony count complaint against Stewart on May 1, and arrested him on May 9. A disposition hearing as to both cases is set in mid-July.

Defendant Harry Olivas, Jr. (Case No. FSB040020)

Investigation Assigned: 6-3-03. Investigation Completed: 6-24-03.

On 10-27-99, Olivas was hired as a janitor by the Fontana Unified School District. In February, he reported suffering an injury on 2-4-03 to his lower back while mopping a boy's rest room. He saw a number of doctors, and finally started treating with Dr. Steineman at Arrowhead Orthopedics. On the patient questionnaire at Dr. Steineman's office, he did not disclose the 5-24-95 industrial injury to his low back suffered while working for Lightoiler (which resulted in a "take nothing" at a WCAB trial because the Deft. was a "big fat liar"). During his recorded interview, he denied having suffered any prior industrial injuries; having ever been a party to or having filed a workers' compensation claim; and said that his only employer prior to FUSD was Fontana Maintenance (omitting Lightoiler). On 6-27-03, Samaniego filed a 6-felony count complaint against Olivas, and secured a warrant for his arrest.

Suspect Serapio Nieto.

Investigation Assigned: 9-19-02. Investigation Completed: 9-29-02.

Nieto fractured his hand while working on the cattle ranch of a SCIF insured. The insured alleged that Nieto suffered this injury while engaged in "horseplay", and was, thus, ineligible for benefits. Samaniego interviewed the percipient witnesses, who established that Nieto was performing work duties when he was injured—even though he performed those duties in a manner not approved by his employer. Since Nieto's behavior did not fall within the case law definitions of "horseplay", this case was respectfully rejected.

Suspect John Sedano.

Investigation Assigned: 3-1-03. Investigation Completed: 3-11-03.

Sedano was a truck driver who injured his low back but did not report until he had separated from company by mutual agreement. He then reported 3 separate back injuries covering three different carriers. At deposition, he testified that yet another prior injury (to his head) caused significant medical problems; he admitted working at three different businesses since the separation from his employer. Sub rosa showed him driving a dump truck for yet another business that he did not mention during the deposition. When an investigator called that business, personnel denied knowing him. During his investigation, Samaniego learned that Sedano stopped receiving TTD in March and did not begin working for any other company until May. A letter explaining the reasons for rejection was sent to Golden Eagle's Kathleen Lynaugh in mid-March.

Suspect: Cornerstone Medical.

Investigation Assigned: 3-15-03. Investigation Completed: 4-1-03.

This case was referred by an employer, Jim Slaten of Omega Extruding. One of his injured workers designated Cornerstone Medical as his treating physicians, and was prescribed receipt of physical therapy at that location. The employer contended that physical therapy sign-in sheets reflected that his employee was supposedly receiving therapy during hours that the same employee was documented as being at work. Investigator Samaniego conducted an exhaustive review of the records related to the injured worker in question. He found that, in only one instance, the records reflected "simultaneous" treatment of and work by the injured worker. He also uncovered almost twenty instances in which the injured worker had received treatment but the carrier had not been billed! In this case, the "sloppy bookkeeping" defense is actually appropriate. A letter of rejection was sent to Mr. Slaten.

Suspect: Brenay Merritt.

Investigation Assigned: 1-21-03. Investigation Completed: 2-7-03.

Merritt is a clerical employee of the District Attorney's Office. She has filed numerous compensation claims during the course of her county employment. During a routine payroll audit, a District Attorney payroll clerk discovered that Merritt had received state disability benefits concurrent with her receipt of TTD from the County, and had failed to disclose same to any of her supervisors. Investigator Samaniego completed an investigation. His report was forwarded to the Attorney General for possible criminal prosecution, due to the relationship between the Suspect and her immediate employer. Samaniego has received no information regarding the result of the Attorney General's review of this matter to date.

Suspect Juan Antonio Vargas.

Investigation Assigned: 9-29-02. Investigation Completed: 10-2-02.

Again, an insured referred this case, believing that his injured worker was working for a competitor and collecting wages while receiving TTD payments. Investigator Samaniego interviewed all of the relevant individuals. Those reports of interview document that the injured worker received no illicit income while receiving TTD benefits, and performed no activities outside of his medically designated physical restrictions.

Suspect Venus Williams.

Investigation Assigned: 3-21-03. Investigation Completed: 5-13-03.

Williams worked as a word processor for the San Bernardino City Unified School District. On October 1, 2002, she reported a continuous trauma injury to both elbows due to the use of computers. This claim was accepted. Williams was initially returned to work on light/modified duty, but subsequently declared TTD because she "was in so darn much pain and could not do anything". The defense physician filed reports indicating that Williams told him she did nothing all day but stay home and do her exercises, and that she did not drive. Sub rosa contradicted those statements. Investigator Samaniego interviewed the physician, who said that Williams' statements were not quite that definitive; in fact, he said that Williams said that she had pain when she performed those activities captured on sub rosa. As Williams made no discernable material misrepresentations, this case was officially rejected last month.

Program Investigator

Stephen Nelson, Investigator I.

Tenure on Unit/with program: November, 2002-present.

Percentage of time devoted to program: 100%.

**List of Investigations: Fiscal Year 2002-2003**

**Defendant Devin Saulet (Case No. FSB038181).**

) Investigation Assigned: 12-2-02. Investigation Completed: 2-7-03.

When Saulet was hired by the County of San Bernardino as a meter reader, he had pre-existing work restrictions due to a prior workers' compensation claim resulting from his employment by the Department of Forestry. Saulet worked about a year. He then reported that he injured his right wrist, right shoulder, and right buttocks while reading meters. However, he told two co-employees that he had actually suffered his injury while en route to work when (alternatively) he slipped on some ice or chopped wood. Investigator Nelson filed an eight-felony count complaint against Saulet, who was arrested on March 1. On June 4, he tendered the full amount of restitution due (\$2,500) prior to entering his misdemeanor plea to one count of I.C. 1871.4; he was placed on probation and ordered to pay a victim fine and serve community service.

**Defendant Deborah Lofgren (Case No. FSB038834).**

Investigation Assigned: 1-21-03. Investigation Completed: 4-4-03.

Lofgren, a phlebotomist, reported that she slipped on water on the bathroom floor and injured her back. She received medical treatment and was ultimately declared TTD. She disclosed that she suffered one prior industrial injury (to her back) while working for the same employer, that she had received treatment for about six weeks, and had returned to work with no problem. She denied to her own doctors and at her deposition having been involved in any motor vehicle accidents. She also denied suffering any back pain prior to the first industrial accident. Research revealed that she had been involved in a motor vehicle accident prior to her industrial accident, and had reported suffering resultant headaches, neck pain, numbness bilateral arms to all ten fingers, bilateral shoulder pain, right wrist and hand pain, and mid and low back pain. When evaluated by the defense QME, she admitted having suffered the prior accident, but told him she suffered no injuries as a result. Investigator Nelson filed a six-felony count complaint against Lofgren in April, and arrested her late that month. She bailed out of custody, and the case remains pending.

**Defendant Stephanie Petzger (Case No. FSB039200).**

Investigation Assigned: 3-12-03. Investigation Completed: 5-1-03.

Petzger was a Mobile Cellular Wireless salesperson for about four days before she just stopped showing up. She was ultimately fired for lack of attendance. She then alleged that, during the course of her employment, she had been repeatedly pushed, kicked, knocked down, and pulled into headlocks by two co-workers, and that these actions caused bruising, bilateral arm and leg bruising, internal injuries and a psyche/stress injury. She began receiving state disability benefits through EDD. The employer was not notified for a week. The claim was delayed and denied. Her supervisor had virtually "shadowed" her during the time she was at work because she was in training; he never saw any untoward incidents or accidents. None of the coworkers witnessed the alleged acts. The accused deny committing the acts. Investigation revealed that, during the four days Defendant did work, the assistant manager told Petzger that she (the manager) was suing her prior employer because "she had been assaulted by coworkers....". Defendant was examined by a psychiatrist, who found that Petzger had not suffered an industrial injury, and listed all his reasons in support of his opinion. This case settled in the W.C.A.B. for \$1,000. A 5-felony count complaint was filed by Nelson on 5-2, and Petzger was arrested on 5-21-03. This case awaits disposition or preliminary hearing.

**Defendant Maria Lash (Case No. FSB039276).**

) Investigation Assigned: 3-21-03. Investigation Completed: 5-7-03.

Lash (a 61-year-old woman, 3 units short of a Masters' Degree) was employed by the Barstow Unified School District as an instructional aide when she reported that she suffered injury to her head and neck when she was hit in the face by a door. The claim was admitted, and she received immediate medical treatment and was declared TTD. She has never returned to work. Her physical complaints morphed to include her back, shoulders, upper and lower extremities, etc., as well as a psych component. She admitted that her family owned the Main Street Gym in Barstow, but said repeatedly (to doctors and during depositions) that she had either never been there or had been there only to visit since the date of injury. She specifically denied having worked at the gym since the date of injury. Not surprisingly, extensive video shows her working at the front desk of the gym, cleaning equipment, etc. Nelson filed a 6-felony count complaint against Lash and obtained an arrest warrant. Lash was arrested on 5-24-03. This case remains pending litigation.

Defendant Sueheil Shakouj (Case Number FSB039847).

Investigation Assigned: 4-7-03. Investigation Completed: 6-4-03.

On 2-9-02, Defendant (a laborer employed by Omega Extruding), filed a DWC-1 claiming he suffered a laceration on the third finger on his right hand when he tried to fix a machine without turning it off. The claim soon morphed to include his right hand and right shoulder, then his neck, both shoulders and arms, and back. During his deposition, he testified that he "could not recall" any prior injuries to his right shoulder or neck; that he had never suffered an injury to his right hand prior to his current industrial injury; and that, during an auto accident in October of 2001, he had only injured his left lower back. Medical reports and settlement records show that, during the auto litigation, he claimed he had injured his neck, head, cervical spine, shoulders, arms, hands, cervical spine, thoracic spine, lumbar spine, and had experienced nervousness, anxiety and tension. Defendant also told the defense QME that, prior to his current industrial injury, he had suffered no prior non-industrial injuries or accidents and had received no treatment for any alleged prior injuries. Investigator Nelson filed a multi-felony count complaint against Shakouj in June, and obtained a warrant for his arrest.

Defendant Henry Wallach (dba Biodata Medical Labs) (Case No. MSB069381)

Investigation Assigned: 5-30-03. Investigation Completed: 6-24-03.

This case was referred by applicant's attorney Michael Hurley, whose client was carjacked while he was working for the Defendant. Inquiry to the Department of Industrial Relations established that the Defendant had been operating without insurance for approximately five months. When interviewed, the Defendant admitted same. Nelson filed a single-count misdemeanor complaint against the Defendant on 6-27-03, and he is scheduled to be arraigned in late July.

**Program Prosecutor**

Tracy Bartell, Deputy District Attorney IV.

Tenure on Unit/with program: January 1, 1997-present.

Percentage of time devoted to program: 100%.

**List of Prosecutions: Fiscal Year 2002-2003**

**District Attorney Investigations**

**Cases Filed during Fiscal Year 2002-2003.** (As these cases are described above, they are listed here by title and disposition only.) People v. Elizabeth Leyva: Leyva found guilty of P.C. 666, placed on probation, ordered to serve 270 days in jail (in addition to other terms and conditions of probation) and insurance fraud case dismissed (denied claim); People v. Robert Strohbach and Gloria Escoto: Both Defts. pleaded guilty to felony P.C. 487(a), were placed on probation, ordered

to pay for billing monitoring during probationary period, \$40,000+ in restitution paid to 11 victims prior to acceptance of plea, \$12,500 total fines to D.O.I. Fraud Account; People v. Debbie Lofgren pending; People v. Jamie Stewart: pending; People v. Deborah Doss: pending; People v. Lavonne Grondwalski: pleaded guilty to felony I.C. 1871.4; probation, 90 days in jail, \$10,036.66 restitution; People v. Steven Taylor: pending; People v. Sueheil Shakouj: pending.

**Cases Filed in Prior Fiscal Years.** People v. Tony Rende (FSB324543): Deft. pleaded to felony 487(a); probation, \$11,000 restitution and community service; People v. Amanda Pestano (FSB032954): case pending preliminary hearing; People v. Benjamin Reaves (AKA McCreary) (FSB033055): case pending preliminary hearing or disposition; People v. Robert Campos (FSB033054): Defendant held to answer and case set ready for jury trial; People v. Janice Waters (FSB033704): Defendant held to answer and case set ready for jury trial; People v. Martin Panduro (FSB033741): criminal complaint filed and arrest warrant outstanding; People v. Gabriel Hakim (FSB033740): Deft. pleaded guilty to felony I.C. 1871.4; probation with 90 days in jail and restitution of \$1,665; People v. Rodney Arredondo (FSB034101): Deft. pleaded guilty to one felony violation of I.C. 1871.4, the plea agreement terms include 90 days in jail and restitution of \$2,809.66; People v. Janis Clinton (FSB034482): Deft. pleaded guilty to felony I.C. 1871.4, plea agreement terms include 200 hours of community service and \$10,000 restitution; People v. Pablo Pretel (FWV025140): Deft. held to answer after preliminary hearing and case set ready for jury trial; People v. Joe Valadez (FSB034913): Deft. held to answer after preliminary hearing and case set ready for jury trial; People v. Juan Corral Rios (FSB034997): Deft. pleaded guilty to felony I.C. 1871.4; probation with 90 days in jail, restitution of \$29,532.92; People v. Jorge Hernandez (FSB034876): Deft. pleaded guilty to felony P.C. 487(a); probation with 90 days in jail and no restitution (denied claim); People v. Dianna Cotwright (FSB035172): Deft. pleaded guilty to one felony violation of I.C. 1871.4, plea terms include 90 days in jail and restitution of \$6,738.43; People v. Michael Byrd (FSB031696): Defendant held to answer after preliminary hearing and case set ready for trial; People v. Robert Angerer (FSB017436): Deft. pleaded guilty to misdemeanor I.C. 1871.4; placed on probation and ordered to perform community service and pay fine; People v. Kim Carter Bell (FSB023292): felony complaint filed and arrest warrant remains outstanding; People v. Deborah Hall (FSB023684): Deft. was declared incapable of participating in her defense per Penal Code section 1368, proceedings were suspended while she received psychiatric treatment, the statutory time for the suspension of criminal proceedings lapsed with Deft. still adjudged incapable of participating in her defense, so the case was dismissed as a matter of law; People v. Herbert Ross (FWV17098): Deft. pleaded guilty to felony P.C. 487(a), placed on probation and ordered to serve 150 hours community service and pay \$7,500 restitution to Golden Eagle.

### **Fraud Division Investigations**

#### **Cases Filed during Fiscal Year 2002-2003.**

Defendants Michael and Patrice Futter (Case No. FSB038721). Investigator Ric Hernandez.

The Defendants owned two construction concerns insured by SCIF. They regularly reported payroll, but in the classification that would net them the lowest possible premium. Subpoenaed payroll data from the Employment Development Department revealed that the Defendants reported having paid much more payroll than had been reported to SCIF. Search warrants served on the Defendants' bank accounts generated several payroll checks that further increased the amount of payroll attributable to Defendants. Based on this evidence, DOI Investigator Hernandez filed a three-felony count complaint with a PC 12022.6(b) enhancement against the Defendants. The Grand Jury heard the evidence against the Futters, and returned an indictment charging both

Defendants with committing Grand Theft (P.C. 487(a)) and Premium Fraud (I.C. 11880(a)). This case awaits disposition or jury trial.

Defendants Rosemary Mitchell, Frank Mitchell, Gary Boland, Rigoberto Montes (Case No. FSB-38867) Investigator Sandra Carrizosa.

The Mitchells are also Defendants in a premium fraud case filed by Investigator Sandy Carrizosa last fiscal year. They run Outwest Construction and Outwest Framing and are insured by SCIF. Last years' complaint (see below) accused the Mitchells of defrauding SCIF of over 2 million dollars of premium payments. The Grand Jury returned a multi-felony count indictment as to that case this spring. During the course of that investigation, Investigator Carrizosa suspected that the Defendants were laundering their profits through Tina's Mexican Restaurant in Riverside in order to obtain cash to pay employees under the table. Her investigation proved fruitful: bank records evidence that the Mitchells fraudulently passed checks payable to various construction suppliers through that restaurant in order to obtain thousands in cash to pay employees. (Thus far, her investigation indicates that the Mitchells and two co-defendant employees laundered over \$800,000 through this restaurant.) Carrizosa filed a 29-felony count complaint charging violations of Penal Code section 186.10; the Mitchells were arrested on 4-8-03 and posted bail. All Defendants have been arraigned and await disposition or preliminary hearing.

Suspect: Rajend Charan .Investigator Steve Pahel.

Charan, a tow truck driver employed by a local towing company, was injured when he was inside his truck and it was rammed a couple of times by a drunk driver. He was declared TTD and remained on that status a long time. Thereafter, he was declared a Qualified Injured Worker and became a smog guy. Sub rosa appeared to show he was working in excess of his stated capabilities. Examination of the claim file and related evidence revealed investigative problems that could not be cured. The private investigator "lost" the critical sub rosa report when his computer crashed, and said he could not reconstruct the report. Additionally, the adjuster mistimed the dates of the surveillance vis-à-vis the deposition and medical appointments, resulting in statements made prior to any of the objectionable activity. Therefore, this case was rejected for criminal prosecution.

Suspect Leon Parker (Investigator Steve Pahel).

In 1999, Parker settled his workers' compensation case against Southern California Edison for a lot of money and moved to Kentucky. He requested additional significant medical care, and flew back to California for a deposition, at which he testified to a lot of vague complaints, including pain. Video shows him loading up truck to move. Again, analysis of this case revealed a "timing" problem, in that the deposition preceded the deposition. This case was rejected on that basis.

**Cases Filed in Previous Fiscal Years.** People v. Rosemary and Frank Mitchell

(FSB032890); Defendants were indicted by the Grand Jury and are pending disposition or jury trial; People v. Richard and Janey Bonet (FSB032911): Defendants were indicted by the Grand Jury and are pending disposition or jury trial; People v. Teresa Shea Chen (FSB034802): Defendant paid all restitution (\$25,000+ up front), pleaded guilty to misdemeanor I.C. 11880(a), and paid victim restitution fine and \$1,000 fine to D.O.I. Fraud Account; People v. Mary DePrada (FSB024674): felony complaint filed and arrest warrant remains outstanding; People v. Darryl Mayfield (FSB027124): Defendant pleaded guilty to felony I.C. 1871.4(a)(2), and was sentenced

to two years in state prison; People v. Karen Purcell (FSB022510): felony complaint filed and arrest warrant remains outstanding; People v. Robert Waller (FSB020448): Defendant held to answer and pending jury trial; People v. Early Nichols (FSB031034): felony complaint filed and arrest warrant remains outstanding.

### **Program Prosecutor**

Colleen Goggin, Deputy District Attorney IV.

Tenure on Unit/with program: September, 2002-present.

Percentage of time devoted to program: 100%.

### **List of Prosecutions: Fiscal Year 2002-2003**

#### **District Attorney Investigations**

**Cases Filed during Fiscal Year 2002-2003.** (As these cases are described above, they are listed here by title and disposition only.) People v. Scott Everett: Deft. pleaded guilty to P.C. 487(a), paid \$1,263.62 to Republic Indemnity and performed community service; People v. Tamara Adams: Deft. paid over \$10,000 restitution prior to entry of plea; thereafter, pleaded guilty to misdemeanor, was placed on probation and ordered to pay a fine and ordered to perform community service; People v. Art Garcia: case pending disposition or preliminary hearing; People v. Maria Molak: case pending disposition or preliminary hearing; People v. Gregory Allen: Deft. pleaded guilty to felony I.C. 1871.4; will serve probationary term with 90 days jail and pay over \$16,000 in restitution to HH; People v. Kristin Coats: case pending disposition or preliminary hearing; People v. Amir Mansouri: Deft. paid all restitution (\$900) up front, pleaded guilty to misdemeanor I.C. 1871.4, placed on probation, and ordered to serve community service and pay fine; People v. Steven Foster: Deft. pleaded guilty to felony I.C. 1871.4; paid restitution in full, was placed on probation, ordered to perform community service and pay victim fine; People v. Miriam Atme: case pending disposition or preliminary hearing; People v. Devin Saulet: Deft. paid full restitution of \$2,500 up front; thereafter, pleaded guilty to misdemeanor I.C. 1871.4, was placed on probation, ordered to pay victim fine and perform unpaid community service; People v. Debbie Lofgren: case pending disposition or preliminary hearing; People v. Stephani Petzger: case pending disposition or preliminary hearing; People v. Jose Rodriguez: Deft. pleaded guilty to felony I.C. 1871.4; will serve probation, 90 days in jail and perform community service; People v. Jesus Navarro: case pending disposition or preliminary hearing.

#### **Cases Filed During Previous Fiscal Years.**

People v. Teresa Becerra (FSB033053). Deft. was held to answer after preliminary hearing and awaits trial; People v. Eulalio Renteria (FSB03500): Upon Deft.'s payment of restitution (approximately \$650.00) and completion of unpaid community service, case was dismissed; People v. Robert Castro (FSB029012): Deft. pleaded guilty to misdemeanor I.C. 1871.4, was placed on probation, pay \$3,880 in restitution (which has been paid) and ordered to perform community service; People v. Arthur Cardillo (FSB028285): Defendant pleaded guilty to felony I.C. 1871.4, paid restitution in full (\$8,000), was ordered to perform community service and his probation was transferred to Colorado; People v. Richard Jones (FSB026686): Deft. was held to answer after preliminary hearing, was set for jury trial; he then murdered two people and committed suicide, resulting in dismissal of felony charges; People v. Joanne Sitzman (FSB026698): Deft. pleaded guilty to misdemeanor I.C. 1871.4(a)(2), was placed on probation, paid \$2,000 restitution and was ordered to perform community service.

## Fraud Division Investigations

### Cases Filed During Fiscal Year 2002-2003.

People v. Ovidio Ochoa (Case No. FSB035628): Investigator Shawn Curtis.

Defendant, a truck driver, suffered a back injury. The claim was admitted and medical treatment afforded. Ochoa never improved. Sub rosa showed he was working for a Fontana trucking firm as a local driver and at his own shop repairing cars. Ochoa demanded vocational rehabilitation from a prior back claim and got it—was trained to repair cars! He also fraudulently denied prior injuries to his back. Deft. pleaded guilty to felony I.C. 1871.4, was ordered to serve 90 days in jail and pay over \$19,000 in restitution.

People v. Gerald Boiner (Case No. FSB036848) Investigator Shawn Curtis.

On 8-7-01, Boiner worked as a truck driver when he alleged that he fell and injured his right wrist/lower back. The industrial doctor placed him on light duty, but he selected as his treating physician his attorney's medical doctor and was immediately placed on TTD. He received TTD benefits through July of 2002. They terminated only because Boiner repeatedly failed to attend medical appointments. During the course of his deposition, Boiner repeatedly denied having worked for anyone since his 8-7-01 injury. He also testified he had shooting pains in his back and legs that were aggravated by standing, sitting, bending and twisting. Just getting off a couch or bed was tough for this soldier. Investigation revealed that during the time he received TTD, he worked full time as an apprentice lineman, climbing telephone poles (the big ones out by Victorville), lifting heavy objects, digging holes, etc. This case is pending disposition or preliminary hearing.

People v. Joseph Gorman (Case No. FSB036847) Investigator Shawn Curtis.

Deft. was a truck driver. He called his Operations Manager and Dispatcher on successive days and told them he would not be coming to work as he hurt his ankle playing with kids. He then called his boss, and requested to be assigned limited duty as he was financially strapped. His boss said no limited duty was available. Suddenly, the Deft. reported that his ankle injury was industrial; he returned to the doctor (to whom he originally reported that injury was from playing with kids) and claimed his injury was industrial. He told his defense QME that his injury occurred 6 months before he reported it. Gorman paid full restitution (\$1,619.40) up front, then pleaded guilty to a misdemeanor violation of I.C. 1871.4, was placed on probation and ordered to pay a fine and perform community service.

People v. Miriam Atme (Case No. FSB038112) DOI Kevin Oden.

Atme was hired on 11-1-00 as a part time food service employee at Riverside Community College. On 4-27-01, she allegedly entered a walk in cooler and lifted a plastic milk container weighing approximately 50 lbs. She slipped (unwitnessed) on some liquid, fell forward, hit her knee on the floor and right arm on a shelf; hit her left ankle on a shelf. She reported no back pain until a year into the claim. To medical doctors and at deposition, she stated she had no prior history of back pain, treatment, etc., yet records revealed several dates of recent complaints of and treatment to her low back pain. She testified during her deposition regarding numerous physical activities she could not perform; sub rosa shows her doing all of them. This case is pending disposition or preliminary hearing.

People v. Francisco Molina (Case No. FSB 038990) Investigator Steve Pahel.

Molina worked as a Searing Industries delivery man for about a year when he reported the first of four industrial injuries. He was off work for about two years and receiving TTD before someone



thought to order sub rosa, which established that he was working as an auto glass installer while receiving TTD. He lied about the receipt of income from the auto glass business under oath. This case remains pending disposition or preliminary hearing.

Defendant Emilia Sanchez (Case No. FSB036846) Investigator Shawn Curtis

Sanchez worked as a laborer under the name and social security number of her dead sister, and reported an industrial injury. The injury was admitted, and she received TTD and medical treatment. The Deft.'s mother telephoned the claims examiner, and reported that Emilia was using false identification to collect these benefits, while using her true identity to collect welfare benefits. The Deft. pleaded guilty to P.C. 532 on this case, and was ordered to serve 90 days in jail; the restitution amount has yet to be set pending an investigation by the probation department. This case was reported to the District Attorney's Welfare Fraud Unit, is under investigation and will most likely result in a filing on violations of the Welfare and Institutions Code.

**Cases Filed During Prior Fiscal Years.** People v. Juan Garcia (FSB033237): Deft. pleaded guilty to felony I.C. 1871.4; he will be placed on probation, ordered to serve 90 days in jail and pay restitution of nearly \$6,000; People v. Patricia Ortiz (FSB021886): Deft. was convicted by jury of two counts of I.C. 1871.4 and was placed on probation, ordered to serve 90 days in jail and pay over \$20,000 in restitution to Golden Eagle; People v. Rick Cordova (FVI013947): this Deft. was held to answer after preliminary hearing and awaits jury trial.

## COUNTY PLAN PROBLEM STATEMENT

### Question 1.

- A. Please document and describe the types of workers' compensation insurance fraud (claimant, medical/legal provider fraud, premium/employer fraud, insider fraud, insurer fraud) relative to the extent of the problem specific to your county.
- B. Estimate the magnitude of the workers' compensation insurance fraud problems and identify the type of fraud indicators in your county.

Certain economic indicators directly correlate to the extent and various types of workers' compensation fraud present in a geographic region. Therefore, an examination of the current and projected economic climate of the Inland Empire is essential in order to document the current incidence of the various genre of workers' compensation fraud, and to predict the future specific types of workers' compensation fraud that will plague San Bernardino County. Initially, one must analyze data concerning particular economic indicia most relevant to employment-related fraud—specifically: population; employment and unemployment rates; job growth; and projected increased growth in both general employment and in the specific industries associated with high rates of reported workers' compensation fraud. Thereafter, each category of workers' compensation fraud (i.e., applicant, premium, employer, provider, and insurer) must be examined, correlating the economic factors related to that type of fraud as well as the data and opinions proffered by the individuals actually involved in the Inland Empire's insurance fraud fighting effort, in order to forecast future incidence. Since all reported, relevant economic data projects growth, logic dictates that workers' compensation fraud—in all of its insidious forms—will also flourish in San Bernardino County.

Notwithstanding his characterization of the national economy as "limping", Federal Reserve Chairman Alan Greenspan noted that many private economists are hopeful that a material rebound in economic activity will develop in the second half of this year based on continued steady consumer prices and increased production by big industry. And notwithstanding a legislature that has contributed to an uncertain business climate by delaying budget approval and failing to address a looming crisis in workers' compensation insurance, Southern California in general and the Inland Empire in particular have posted positive numbers in critical economic categories. The recent prestigious Milken Institute's 200 Best Performing Cities report, which measures where jobs are being created, economies are growing and businesses are thriving, posted the Inland Empire in twentieth place, nationwide. Said Milken Research Analyst Frank Fogelbach: "The Inland Empire ranked number one in overall job growth in the five-year average since 1977...and (the area) ranked seventeenth in wage and salary growth over five years." The Inland Empire faces the task of trying to meet the needs of a population expected to grow by about 80% (to 2.5 million people) by 2020. In recent years, the Inland Empire has continued to boast one of Southern California's hottest real estate sectors, drawing home buyers priced out of surrounding counties; the strong job and housing markets have generated steady population increases and a strong tax stream. Moreover, increased reliance

upon both cargo and passenger traffic passing through Ontario International Airport—and the growth projected in both categories—portends continued economic strength. In addition, the local purchasing managers index continued to post steady increases over the first half of the calendar year. Area economist John Husing stated that jobs, affordable housing, and relatively open space will cause growth in the Inland Empire for the next twenty years.

#### Employment Data and Projections.

The Inland Empire's unemployment rate fell in the first six months of this year; figures released by the Employment Development Department reveal that the Inland Empire gained 6,400 jobs between May 2002 and May 2003. According to area economist John Husing, Editor of the Inland Empire Quarterly Economic Report, "We had the only (job) gains in Southern California...The telling number is 10,700—that's how many jobs were created in the Inland Empire since April of 2002." The quarterly report (June, 2003) of Manpower, Inc, entitled Employment Outlook Survey, reported the results of a poll of Inland Empire employers predicting an estimated 13% net increase in hiring for the upcoming year; the work force increases were projected in the sectors of durable goods manufacturing, transportation/public utilities, wholesale/retail trades, and education. In fact, since January of 2003, nearly 2,000 manufacturing jobs have been added to the region's manufacturing sector, boosting total employment to over 115,000 jobs.

Newspaper reports chronicle exceptional business activity in San Bernardino County. The Fairway Business Center in Ontario broke ground on its 54,000+ square foot office development, to be occupied by First American Title Co., which will employ 350-400 people in a processing facility; a second 66,000+ square foot complex to be opened at summer's end is already in the planning stages. Another multi-tenant commercial center, consisting of 97,000+ square feet, will be built near the existing Ontario Mills mall. And in Rancho Cucamonga, early construction is underway on the Victoria Gardens Mall, consisting of approximately 350 homes and at least five retail centers. "Tenant interest in our project has been strong because of the incredible residential growth occurring, the completion of the new 210 Freeway one mile north, and the proximity of the new regional center", says project developer Michael Rue. Elite Leather Co., manufacturer and retailer of custom leather furniture, currently headquartered in the City of Industry, has signed a \$5.25 million lease on a 96,000+ square foot industrial building. Toyota subsidiary Hino Ltd. plans a major manufacturing plant here that could create 150 new jobs. Krispy Kreme is moving its West Coast distribution operation from Mira Loma to a larger (102,100 square foot) facility in Fontana. Rick John, Senior-Vice President of the Collins Commercial Corp who brokered the deal said that the Inland Empire, particularly western San Bernardino County, has become a major hub for distribution, warehousing and logistics operations. "I've been doing this for 23 years, and the market has gravitated toward distribution. This market is fabulous, and has one of the largest consumer bases in the world. People just love it out here." And in Fontana, the \$14.8 million sale of Palm Court at Empire Center provides a boost for Fontana: the Center is 70% occupied by tenants. Michael Bazdarich, director of the U.C. Forecasting Center said, "Our area is doing well in construction, retailing and white collar service jobs... Warehousing and logistics account for a large component of the Inland Empire's generally robust economy."

#### Ontario International Airport

As reported in the Los Angeles Times, "Ontario is seen as Southern California's best hope to relieve crowding at aging Los Angeles International Airport and to accept travelers from

Orange County where a proposal to build an airfield at the former El Toro Marine Base was defeated." The eighty-year-old airfield was recently named by Forbes Magazine as one of the five best alternative airports for business travelers. Trade magazine Airport World touted the facility as one of the "fastest growing cargo gateways in the U.S." And the Los Angeles Board of Airport Commissioners says Ontario is best suited to accommodate growth due to limited capacity at the Los Angeles International Airport.

The Airport's passenger traffic continues to grow, up over 3% from last year. Regional transportation planners say they will allocate about one-fifth of the 154 million annual passengers expected to use Southern California airports by 2030 to Ontario International, which would represent a nearly five-fold increase over the 6.5 million it served last year. Airport World magazine recently named Ontario's Airport one of the world's top six air cargo airports outside of the Asian Pacific market. OIA is already the West Coast hub for UPS, which handles more than 70% of the airport's cargo. District Manager David Gilliland reported that they are getting ready to move to a large facility in Ontario, upgrading 3,000 square feet. The company's growth in Ontario has been fueled primarily by an increasing demand from the telecommunications industry and from retail sources. Pilot Air Freight reported a 38% revenue increase during the first quarter of 2003. The Southern California Association of Governments projects an increase in air cargo tonnage in the region of 3.5 million tons from 2001 to 9.5 million tons in 2025, of which 2.2 million tons is expected to come from Ontario. The L.A. Board of Airport Commissioners chose a developer (Aeroterm) for a \$143 million international air cargo facility at OIA, the largest air cargo development in process in the country. Air cargo shipments are up more than 7.7 % from the previous year. Ontario International now rates as the 15<sup>th</sup> largest air cargo airport in North America in terms of volume. In 2002, Ontario had the third highest growth rate for air cargo in North America, after Memphis and San Antonio.

#### The Construction Industry.

The San Bernardino County realty market witnessed a 26.7% increase in home construction permits pulled through March of 2003, compared with the same time period last year. In late June, Ben Bartolotto (Research Director of the Construction Industry Research Board of Burbank) reported that single-family home construction permits in San Bernardino County were up 35.4% as of the first five months of 2003. This increase far surpasses the state-wide average of a 16% increase in the issuance of similar permits. Likewise, non-residential permits are up 22.5% in San Bernardino County, while that number is down state-wide approximately the same amount. These figures caused Inland Empire Economist John Husing to conclude that coastal cities are out of land and the construction industry is moving inland. The Inland Empire remains the second most affordable housing region in California—topped only by the High Desert, which is also located in San Bernardino County. The March Housing Affordability Index of the California Association of Realtors showed that, while only 20% of California households and 41% of Inland Empire households could afford a median priced home, that number jumped to 65% regarding homes in the High Desert. During June of 2003, for the fourth consecutive month, San Bernardino County's housing market set records for home prices and the number of homes sold.

### **A. Applicant Fraud in San Bernardino County**

Historically, San Bernardino County's most reported genre of workers' compensation fraud has been applicant fraud, and this fiscal year (2002-2003) proved no exception to the rule. Michael Ingram, the Chief Investigator of the Department's Rancho Cucamonga Fraud Division Office, reported that of the 201 Suspected Fraudulent Claim Reports assigned to his office, a total of 157 complaints (or 78%) reported applicant fraud. The San Bernardino District Attorney's Office experienced similar results. The Unit received a total of 166 Suspected Fraudulent Claim Reports; of that number, 133 complaints described applicant fraud. Analysis of the occupations of the suspects of those complaints documented that most reported fraud occurred in service industries, menial labor jobs contracted by temporary agencies, sales, and—for the first time—in the professional occupations of nursing and teaching. Even accounting for a skew attributable to more aggressive reporting by certain employers and industry members, the predominant theme of the analysis is that the opposite ends of the employment spectrum—lower paying jobs associated with retail, warehousing, manufacturing, and transportation concerns on the one end and higher paying, unionized jobs on the other—are dominating the reports received by both agencies.

Integrating that analysis with the economic data outlined at the outset of this section leads to the conclusion that Inland Empire insurance concerns and the fraud-fighting agencies that serve them can expect these applicant fraud trends will continue. The Inland Empire boasts an economy that has demonstrated sustained growth over an extended time period. Population has increased, and further growth is projected. As population grows, so grow the retail centers to provide products, the warehouses to store the products, the manufacturing concerns to make the products, and the transportation systems to bring foreign products into the area. The businesses and industries necessary to support the current and projected phenomenal area growth are the very concerns that dominate the suspected applicant fraud reports. The only reasonable conclusions are that applicant fraud is not only in the County to stay, but to grow in both numbers and reportable loss.

### **B. Employer Fraud in San Bernardino County.**

#### **1. Premium Fraud.**

Suspected premium fraud is far lower in terms of reported numbers, but far more significant in measurable industry loss. San Bernardino County's sole reporting entity of premium fraud is State Compensation Insurance Fund (SCIF). This County is extremely fortunate that two superb and enthusiastic SCIF fraud investigators are assigned to monitor, report and investigate premium fraud in the County; since Ms. Page and Ms. Forguites have been assigned that responsibility, both the reported number and amount of fraud have significantly increased. According to Chief Investigator Ingram, of the 201 Suspected Fraudulent Claim reports assigned to his office, 24 (or 11.9%) concerned premium fraud. Of the 166 Suspected Fraudulent Claim Reports received by the District Attorney's Unit, eight focused on premium fraud. Mr. Ingram did not indicate the nature of the suspect insureds' business on the reports assigned to the Fraud Division; of the reports received by the District Attorney, one report involved a trucking parts and equipment concern and the remainder involved construction companies. The total estimated monetary fraud of the reports received by the District Attorney

was over two million dollars. (Parenthetically, please note that the Unit's Lead Deputy is currently prosecuting three premium fraud cases involving a total of six defendants and total fraud of just about four million dollars. Two of the premium fraud defendants are also the subjects of a related money laundering case currently on the Lead Deputy's caseload as well.)

Review of the general economic climate in San Bernardino County portends sustained or increased commission and reporting of premium fraud. The construction industry has long been the staple source of this type of fraud, and the reports received this year (as well as the cases currently being prosecuted) document that construction employers are committing wage underreporting, misclassification and fraudulent use of their x-mod factors. As business competition increases in the Inland Empire and multiple companies bid on a finite number of jobs, one would expect premium fraud to flourish in the transportation and warehousing sectors as well.

## **2. Uninsured Employers.**

Suspected violations of Labor Code section 3700.5 have been subject to reporting as of January of 2003. Since January 1, the District Attorney has received thirteen reports of possible uninsured employers doing business in his County. Seven reports were forwarded by Department of Insurance personnel, and the remaining reports came from workers' compensation applicants attorneys. The employment concerns of the suspects of these complaints were transportation, construction and plumbing. Based upon the thriving present and projected economic environment of the Inland Empire and the increasing efforts of the District Attorney's Staff to solicit referrals and publicize accomplishments of these prosecutions (in addition to the relatively quick investigative turnover involved), these cases should assume a more significant portion of the District Attorney's caseload in the future.

## **3. Employer Fraud.**

In the District Attorney's experience, these reports of fraud are increasing steadily. (Mr. Ingram did not indicate how many, if any, reports of employer fraud were received by the Division this fiscal year.) This year, the Unit received five complaints of employer fraud. All of these reports were submitted by workers' compensation applicant's attorneys. (In fact, all were received within one month of the Lead Attorney's address to the local Applicant Attorney's Association.) All reports are currently under investigation by Unit Staff. One of the reports is under concurrent investigation with the District Attorney's Hate Crimes Unit, as the employer not only (wrongfully) deprived the applicant of benefits, but did so using racial slurs in writing that he faxed to the applicant. In terms of projecting future incidence and reporting of this type of workers' compensation fraud, one can only speculate that reporting will increase as some of the complaints are filed and wind through the system to (hopefully) successful results and the Lead Deputy continues her increasing outreach efforts to the Applicant's Attorneys Association.

### **C. Provider Fraud.**

The District Attorney is also experiencing a (welcome) increase in complaints of suspected provider fraud in the workers' compensation system. Three complaints of suspected provider (medical) fraud were reported to the District Attorney. (Mr. Ingram did not indicate how many, if any, provider fraud cases were reported to the Department this year.) All of these complaints were received after publicity regarding the District Attorney's successful conviction of a chiropractor and his office manager for billing fraud. Two of the complaints were thoroughly investigated by the District Attorney Investigator who handled the aforementioned billing fraud case. One was rejected due to lack of proof of specific intent. The other complaint has blossomed into a full-blown billing fraud investigation of a multi-doctor chiropractic office. (See Attachment D.) Although we expect that this case will consume the talents of one District Attorney Investigator exclusively for about six months, we are committed to pursuing this case for a number of reasons. The District Attorney is committed to ferreting out and prosecuting fraud in all sectors of the workers' compensation system, including professionals whose billing practices are strongly contributing to the current systemic crisis in California. Also, as noted above, evidence indicates that reports of similar fraud spike as these cases are prosecuted and positive results publicized.

It is impossible to estimate or predict the extent of provider fraud due to the paucity of reports received since the Unit was incepted in 1993. However, anecdotal reports (received during conversations between Unit Staff and claims examiners, investigators, and insurance defense counsel) indicate that billing fraud is rampant in this county. And, as population and employment increase as forecast by the economic data, industrial injuries will increase as will treatment opportunities. Hence, it is reasonable to infer that provider fraud reports will increase as well.

### **D. Insider Fraud in San Bernardino County.**

The District Attorney received a single report of suspected insider fraud in Fiscal Year 2002-2003. As that report concerned individuals suspected of committing fraud in various locations in San Bernardino and Orange Counties, the Orange County District Attorney was also noticed. Lawyers from the respective offices mutually agreed that the Orange County District Attorney would be ceded investigative priority. (Chief Investigator Ingram did not indicate how many, if any, reports of insider fraud were received by the Division this year.) Again, it is impossible to speculate upon the extent of this problem, due to lack of reporting. This area is most problematic because it is the most difficult to ferret out; the people in the positions to recognize this type of fraud are the least likely to report it, due to liability issues. Therefore, even speculation regarding the existence and extent of this problem is impossible and irresponsible.

## COUNTY PLAN PROBLEM STATEMENT

### Question 2.

**Identify the County's attainable performance objectives, which would significantly reduce workers' compensation insurance fraud.**

The District Attorney's attainable performance objectives, hopefully resulting in the reduction of workers' compensation insurance fraud, must be described specifically as to each type of fraud and the available and projected enforcement resources relevant to those types of fraud. As to applicant fraud, the District Attorney believes that current enforcement efforts have paved the correct course, and that our efforts to increase reporting, investigation, prosecution, and publicity, coupled with our outreach efforts, will significantly decrease applicant fraud. As to employer fraud (including the subsets of premium fraud, uninsured employer fraud and employers' denial of benefits), the District Attorney's performance objectives are more specifically defined than in years past, due to our experience in mounting successful investigations and prosecutions. Regarding provider fraud, the District Attorney's Unit is proud of the investigation and prosecution of the major billing fraud of a chiropractor and his office manager successfully resolved in this fiscal year; District Attorney Investigators are in the midst of a second, similar investigation and plan to aggressively pursue all suspected provider fraud cases reported to the Office. Finally, as to insider fraud, the District Attorney's focus will be on increased outreach efforts to encourage reporting of this type of fraud.

#### **Applicant Fraud: Attainable Performance Objectives Resulting in the Reduction of the Incidence of Fraud.**

In the grant application for FY2002-2003, the District Attorney listed five performance objectives designed to reduce the incidence of applicant fraud in San Bernardino County. Those same performance objectives are equally applicable and compelling as we enter FY2003-2004. Those performance objectives are:

1. Increased review of suspected fraudulent claims/documented referrals.
2. Increased investigation of suspected fraudulent claims.
3. Increased filings of felony criminal complaints.
4. Decreased time lapse between arrest and conviction, either by plea or jury verdict.
5. Increased training/outreach presentations to industry members, employers and community groups.

First, Unit Attorney Staff intend to review in-depth more of the claim files that form the basis of suspected fraudulent claims and documented referrals received from the insurance industry. Three reasons underpin this objective. Initially, increased review of claim files will result in an increased number of cases accepted for investigation and/or prosecution. Referrals from the industry are authored by claims examiners and SIU Investigators—not by prosecutors, or by investigators who work daily with prosecutors and who are most aware of the elements of specific crimes and the proof required for a criminal conviction. Frequently, referrals are written to stress the strength of a particular theory of fraud, yet when the claim file is reviewed by a prosecutor or law enforcement investigator an alternative theory is more tenable factually



and legally. Just as frequently, when a claim file is ordered after receipt of a referral, the claims examiner or company investigator expresses surprise or shock because "the case just isn't very strong, but my supervisor told me to refer it". Yet again, upon review of the claim file, a strong prosecutable case is discovered. Secondly, increased review of claim files by Unit staff will help train claims examiners and insurance investigators in analyzing which of their cases to refer to the District Attorney. Upon review of a claim file by a Unit attorney, the case is either accepted for investigation, rejected for investigation/prosecution, or follow up investigation is requested. In all cases, the submitting individual is personally contacted by telephone or letter, and advised of the decision. If the case is accepted, the judgment and analysis of the submitting individual are affirmed. If the case is rejected, the reasons for the decision are explained, thus training the submitting individual regarding jurisdictional, evidentiary and trial consideration issues. And if follow-up investigation is requested, the submitting individual is made aware of deficiencies in the submission, thus ensuring the completeness of future submissions. Finally, the exercise of reviewing claim files similarly trains Unit personnel, and increases the communication between Unit Staff members and the members of the industry they serve.

Second, Unit Staff must continue to increase the number of completed investigations, particularly provider fraud investigations. Some investigations will result in filed complaints, and some will result in rejections. Of course, increasing the number of prosecutions is a primary goal, since more criminals will be brought to justice and more victims will receive restitution. But investigations resulting in rejections also serve valid purposes. They assure the industry that Unit Staff are working hard to address their concerns. They assure insureds that the involved insurance company is standing up for the insured's interests, increasing the credibility of the company and enhancing the relationship between the insured and insurer. And any investigation increases the experience and ability of the investigator, a primary goal of the District Attorney.

Third, Unit Staff must continue to increase the number of felony complaints filed, the number of defendants filed against, and the complexity of the investigations and prosecutions attempted and completed. Our increased experience and sustained funding obligate us to continue our evolution by targeting and tackling the recidivists, those who simultaneously victimize multiple victim companies, those who perpetrate fraud over an extended time period, and those who illegitimately receive large amounts of money in benefits from victim companies.

Fourth, the Unit Deputies District Attorney must prioritize speedy resolution of cases. The more quickly our defendants are brought to justice, the stronger the deterrent value resultant from the prosecution. Victim companies will begin receiving restitution more rapidly. And the fact of the criminal conviction can be used in the Workers' Compensation Appeals Board to either suspend benefits or obtain a "take nothing" award against the applicant/criminal defendant—saving the victim company (and its insured) from paying out more money in benefits, attorney fees and increased premiums.

Fifth, Unit Staff must increase the number of outreach presentations to community and public groups, and training provided to industry members, law enforcement officials, and participants in the workers' compensation system (e.g., medical personnel, employers, insurance defense lawyers, etc.). Past presentations performed by Unit Staff have resulted in increased case submissions, an increased quality of cases received, stricter compliance with reporting

requirements by industry personnel, increased understanding by employers/insureds of the difference between criminal fraud and system abuse (negating or reducing their perceived frustration at insurers who "won't prosecute"), and increased knowledge and sensitivity on the part of Unit Staff regarding the concerns of various participants in the workers' compensation system.

#### Employer Fraud.

#### Premium Fraud: Attainable Performance Objectives Resulting in Reduction of the Incidence of Fraud.

Respecting premium fraud investigations, the District Attorney's performance objectives are:

1. Increased filings of felony criminal complaints, regarding cases investigated by DOI Fraud Division Investigators.
2. Increased training opportunities, particularly as afforded by NICB staff.

Insofar as San Bernardino County is concerned, the Fraud Division has largely "occupied the field" of premium fraud investigations by dedicating an increased number of investigators solely to the investigation of premium fraud cases. Fraud Division Investigator Sandra Carrizosa has handled and continues to investigate increasingly sophisticated and difficult premium fraud cases, as well as serve as a training officer for several (at last count, four) Fraud Division Investigators dedicated primarily to address the problem of premium fraud in the Inland Empire. Investigator Carrizosa also strongly "urged" the Unit's Lead Deputy to present three pending premium fraud cases to the grand jury (as opposed to presenting the evidence to a judge at a preliminary hearing). The Lead Deputy finally understood the wisdom of that suggestion, and successfully presented all three cases and obtained the requested indictments in less than a week's time. The District Attorney's Unit continues to plan a formal training opportunity regarding premium fraud investigations, featuring NICB staff experts in this field. Meeting the performance objectives outlined above will result in punishing criminals, obtaining restitution for victim companies, increasing the credibility of both the District Attorney and insurance industry with the public at large and other insured employers, and enhancing the skills of Unit Attorney staff.

#### Uninsured Employers: Attainable Performance Objectives Resulting in Reduction of the Incidence of Fraud.

The District Attorney's performance objectives regarding Labor Code 3700.5 cases are:

1. To encourage and attain increased reporting of potential violations.
2. To successfully prosecute a significant number of cases, and publicize the results of the prosecutions.
3. To educate the San Bernardino judiciary regarding the importance of these prosecutions and institute a standard probationary punishment regimen for those convicted of violating the statute.

The District Attorney intends to continue aggressively educating the legal and business communities regarding our dedication to the prosecution of L.C. 3700.5 violators. Experience

has established that the most stable and enthusiastic referrals of these violations is the membership of the Applicant's Attorneys Association (whose clients are frequently employed by these scofflaws) and competitors of those violating the law, as the competitors are frequently economically disadvantaged by the cheats. Thus, the Unit's Lead Deputy has committed to maintaining a viable, professional and respectful relationship with members of the Applicant's Attorneys Association, attend their meetings regularly, and will present whenever asked. Likewise, outreach efforts regarding the business community, dormant for a couple of years since the first "round" of speaking engagements, will ratchet up so that the Unit's Lead Deputy can educate these proactive members of the business community regarding our new responsibilities under the law and our willingness to perform them.

As indicated within, the District Attorney's Unit has already received a number of complaints regarding uninsured employers, investigations have been undertaken and one case filed. We are proceeding cautiously in this area, filing and presenting only our strongest cases to the bench so that we establish a credible reputation as prosecutors of these violations. We have initiated overtures to the managing members of the bench regarding our proposed standard disposition after conviction of these violations, encouraging the judges to funnel the fine money assessed upon and collected as a result of these violations to the Department's Fraud Account. In addition, we are proposing standard imposition of the maximum period of probation available in these (misdemeanor) cases, maximizing our monitoring and enforcement efforts.

#### **Employers' Benefit Denial Fraud: Attainable Performance Objectives Resulting in Reduction of the Incidence of Fraud.**

The District Attorney's performance objectives regarding fraud resultant from employers' illegal denial of benefits are:

1. Maximization of efforts to encouraging reporting of this type of fraud.
2. Prioritized dedication of investigative and prosecutorial efforts regarding cases filed alleging employer denial of benefits cases.
3. Publicizing positive efforts and results of these case investigations and prosecutions.

The primary focus of the District Attorney's efforts regarding these fraudulent instances involves educating the relevant parties concerning the legal definition and elements of the crime, and encouraging the reporting of any suspected fraud. Reporting of employer benefit denial cases is low, and we suspect that is a result of a perception on the part of the victims of this type of fraud (and their legal representatives) that a Unit funded largely by the employers and insurance industry would be unreceptive to and unenthusiastic about investigating and prosecuting this type of violation. That inherent attitude must be changed. The District Attorney is convinced that this attitude will be changed only as a result of repeated public statements of our willingness to handle these cases and our aggressive investigation and prosecution of any such reports made to the Unit. Therefore, shortly after the beginning of the new fiscal year, the Unit Lead Deputy has planned a mailing to the community groups she has previously addressed, specifically outlining the District Attorney's commitment to these types of cases and offering to address the respective memberships regarding the elements of the crime, the requisite proof, and reporting requirements. Once fraud referrals are received by this Office, they will be promptly reviewed and, to the extent the cases are viable, investigative

priority will be ceded to these cases over applicant fraud cases. The District Attorney is anxious to assure his electorate that he will administer the law in an even-handed fashion, and should that include prioritizing these cases on a temporary or long-term basis, then that is a commitment that the District Attorney is willing to make. And, of course, as with any case, once positive prosecutorial results are achieved, they will be publicized as widely as possible in order to encourage increased reporting and deter would-be violators.

**Provider Fraud: Attainable Performance Objectives Resulting in Reduction of the Incidence of Fraud.**

The District Attorney's performance objectives are:

1. To investigate and, if warranted, prosecute the (possible) criminal conduct of the target discussed in Attachment D.
2. To prioritize these investigations and prosecutions both within the office and in the public arena.

Investigations into alleged provider fraud have proven a natural progression for Unit Staff in the workers' compensation insurance fraud arena. Due to the District Attorney's successful investigation and prosecution of multiple defendants charged in a major billing fraud case, we have established credibility in the insurance, medical, legal and judicial communities regarding our willingness and ability to assume responsibility for these major cases. As indicated in Attachment D, we have already undertaken a factually similar investigation involving at least three defendants. We plan to aggressively publicize and prosecute our efforts regarding this case, which we hope will encourage increased reporting as well as enhance our credibility as a major prosecutorial threat.

**Insider Fraud: Attainable Performance Objectives Resulting in the Reduction of the Incidence of Fraud.**

**To increase reporting of this type of fraud by members of the insurance industry.**

In the last year, the District Attorney mounted two prosecutions of perpetrators of insider fraud. One prosecution resulted in a plea to felony grand theft, with a sentence including 180 days in jail and restitution. The other insider fraud case remains active, pending trial. Again, investigation and prosecution of these criminals is totally reliant upon reporting measures unique to the victim. The Lead Deputy has increased her outreach efforts directed at the industry and, during her presentations to industry employees, described and encouraged the reporting of this type of fraud, promising anonymity to the reporter. The District Attorney sincerely hopes that victim companies continue to report these crimes, allowing us to pursue the perpetrators.

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**Question 3**

**Detail the three-year goals of San Bernardino County in the battle against workers' compensation insurance fraud.**

The District Attorney's three-year goals for his workers' compensation fraud prosecution unit remain identical to the goals outlined in last years' grant application. They are:

1. To continue the annual trend of increasing investigations and felony complaint filings regarding applicant, premium, uninsured employer, and provider fraud cases;
2. To continue the annual trend of increasing the amount of restitution ordered, collected and returned to victims as a result of Unit efforts;
3. To continue to train those involved in the anti-fraud effort, and to educate community members and participants in the workers' compensation system regarding applicable laws and resources;
4. To establish a prosecutorial presence against provider fraud by actively investigating and prosecuting medical and legal provider fraud;
5. To continue to assist all participants in the workers' compensation system, thus increase the credibility and reputation of this Unit Staff and this Office as a helpful resource in the anti-fraud fight.

Detailing the implementation and (hopefully) accomplishment of these goals on a year-by-year basis is impossible, for progress must be assessed, and goals reevaluated and reset at each years' end. The obvious and most important goal of the District Attorney is to annually increase his level of service to the victims of insurance fraud in San Bernardino County by increasing the number of felons prosecuted and convicted, and increasing the amount of restitution ordered, collected and returned to those victims. This marked the third year of the District Attorney's participation in the Workers' Compensation Fraud Consortium, a continuing effort committed to providing on-going training to the "line soldiers" in the fight against fraud, as well as to serving as a networking opportunity for professionals that rely on each other to effectively do their jobs. Finally, his mandate as an elected official requires that the District Attorney assist all legitimate judicial efforts. Through the efforts of Unit Staff to aid the personnel of the local Workers' Compensation Appeals Board, to educate the insurance defense bar regarding the applicable criminal statutes and the evidence required for successful prosecution, and to provide assistance to ancillary agencies (such as the Uninsured Employer's Fund), we also bring our efforts to the attention of more participants in the system and will hopefully result in more fraud reporting and criminal prosecution.

## COUNTY PLAN PROGRAM STRATEGY

1. Describe the manner in which the District Attorney will address the problem defined in the problem statement.

Since 1997, the San Bernardino District Attorney's Workers' Compensation Insurance Fraud Unit Staff has focused on defining the changing nature and extent of the problems extant in the county, and worked deliberately and steadily to address and eradicate same. Review of the statistics outlined in the "Qualifications" section of this application document the efficacy and consistency achieved by this approach. Our "game plan" is simple: we examine the data we receive to determine where to concentrate our efforts, develop investigative and prosecutorial protocols and strategies, then implement those strategies, adjusting as appropriate. That approach has served the community, insurance industry and (most important) justice well. This Unit has an enviable history regarding the investigation and prosecution of applicant fraud, in terms of numbers and seriousness of the cases handled. Due to the superior work of local Fraud Division Investigators, we have successfully prosecuted significant premium fraud cases, with many more in the pipeline. And in the last year, District Attorney Unit Staff made our initial foray into provider fraud cases, conducting a major investigation into billing fraud perpetrated by a local chiropractor, so successful that both the doctor and his office manager pleaded guilty to felony charges at arraignment. The purpose of this summary of Unit activity is not meant as boastful, but rather is designed to demonstrate the analytical and deliberate approach taken by Unit Staff in defining and addressing the unique problems posed by the workers' compensation system in this County. In summary, the District Attorney's Staff (with significant contribution by the local Fraud Division) intends to "stay the course" regarding our applicant and premium fraud prosecutions; we pledge to continue and expand our efforts regarding the investigation and prosecution of provider fraud and uninsured employer cases; and we intend to shift our outreach and developmental process onto developing any employer fraud cases that cross our path.

That said, the District Attorney presents the following objectives, modeled upon our past approach to addressing specific types of workers' compensation fraud in this particular county. In order to maximize our efficacy in combating workers' compensation fraud in San Bernardino County and implement the performance objectives outlined in the County Plan Statement, the following steps must occur:

1. Additional staff must be added to the Unit. An additional Deputy District Attorney must be added to Unit Staff.
2. Unit Staff, as reconstituted, must be educated regarding specific workers' compensation fraud problems in this County, and integrated into the existing industry anti-fraud efforts.
3. The assignments of Unit Staff members and expectations regarding production levels and development of expertise shall be specifically described.
4. The Unit Staff shall continue to provide varied training opportunities to industry personnel, and shall continue to provide outreach presentations and information to community groups and the public at large.
5. The District Attorney shall prioritize the investigation of provider fraud and employer fraud targets.

Analysis of the implementation of the performance objectives follows:

1. Additional Staffing.

By far, the most critical component of the District Attorney's plan is the addition of personnel to the Unit Staff. Insider and provider fraud investigations/prosecutions are both staff and time intensive. The data contained in this Application's Qualifications Sections establish that the members of this Unit are extremely hard working, productive individuals. Moreover, the statistical projections contained in the Application's Problem Statement indicate that all of the fraud indicators relevant to workers' compensation in San Bernardino County are on the rise—the number of employees in minimum or low wage jobs is increasing significantly as are the number of employers and employees in industries noted for high incidence of premium fraud. Therefore, it is safe to assume that there will be no paucity of applicant and premium fraud cases reported for investigation and prosecution to the Unit Staff. In order to maintain the level of resources devoted to applicant and premium fraud; to continue to make inroads into provider fraud; to fulfill our duty to investigate and prosecute Labor Code section 3700.5 cases (see Section 10); and to undertake outreach, investigative and prosecutorial efforts in the area of employer fraud, a third attorney must be added to Unit Staff.

2. Integration of newly assigned Unit Staff.

The District Attorney's Unit has undergone a personnel shake-up in the last two years. The mainstays of the Unit—the Lead Attorney, Supervising Investigator and Secretary—remain constant. The Unit (and industry) have been fortunate that such quality personnel have replaced former staff members. The Unit's second lawyer position was switched almost a year ago, and the attorney assigned quickly proved her value. Ms. Goggin tried a case to jury verdict successfully within months of her assignment; that willingness and ability did not go unnoticed by the defense bar and judiciary, and has resulted in her successful resolution by guilty plea of nearly every case assigned to her. Ms. Goggin carries a caseload equal to that of the Lead Deputy, notwithstanding her short tenure on the Unit. She also manages this Office's responsibilities re: the monthly Workers' Compensation Fraud Consortium.

The Investigative Staff has also undergone major changes. Jay Farrand, a long-term Unit member, was transferred to another Unit due to an injury he suffered that prohibited him from participating in field work. Farrand was replaced by thirty-year law enforcement veteran Stephen Nelson, whose contribution has been valuable; however, Nelson is scheduled to retire next February. Investigator Ron Moore also worked on the Unit for years, and was recently assigned to a trial preparation position; he will be replaced by Susan Nila, a highly motivated and respected officer. And the Unit's first Clerk III transferred to our Victorville Office (where she lived) shortly after passing probation, and was ably replaced by Michelle Peterson, a lateral from another special unit.

All of these changes have had positive results. The Qualifications section of this Application documents that our productivity, in terms of numbers and impact, has increased. However, change is not without its downside, which, in the case of non-traditional law enforcement efforts like insurance fraud investigations, is found in the training sector and in the investigators learning the names and nature of the people involved in our efforts. That training and bonding takes time, but in the long run proves its worth.

### 3. Specific description of the assignments and expectations of Unit Staff members.

Based upon experience acquired and results achieved since 1997, the District Attorney believes that clarifying the roles and assignments of each of the Unit Staff members, as well as setting goals and expected target dates, will produce the tangible and intangible benefits previously described. Likewise, development of different areas of expertise and the opportunity to work on different types of investigations is attractive to all of the Unit Investigators, each of whom were involved in traditional police enforcement for over twenty years. The District Attorney proposes to expand this approach. As much as is possible, the procedures for investigating applicant fraud and premium fraud cases will continue to be refined. The Senior Investigator will conduct periodic reviews with the Investigators, during which goals and expectations will be defined and reassessed. In this way, problems blocking or delaying their investigations can be timely addressed and solved. Thus, case investigations can more quickly be completed, which will increase filings and best serve our victims.

This approach will also be applied to the attorney staff, particularly if a third lawyer joins the Unit. The most important priority for the attorney staff in the coming year will be the speedy resolution of cases, be that by way of plea or jury verdict. By speedily resolving cases, the insurer/employer liability in the WCAB will be reduced since the result of an I.C. 1871.4/I.C.1871.5 defense is a denial of benefits or a take nothing award. Additionally, quick criminal consequences, especially if well publicized, will provide a deterrent message to the members of the community similarly inclined to commit fraud.

The bottom line is that expectations and goals will be clearly outlined, and constant monitoring will be employed. The most important objective is overall reduction in the life of a case: that is, the time between the receipt of a suspected fraudulent claim/documented referral and filing of a complaint; between the filing of a complaint and the arrest of the defendant; between the filing of the complaint and the disposition of the case (whether by guilty plea or jury finding). "Micro-management" is not the purpose here—the purpose is to insure that all staff members stay on track, seek/receive help in accomplishing their aims as quickly as possible; and that Unit Staff members develop expertise in all phases of investigating these highly specialized fraud cases.

### 4. Expansion of offered training opportunities and increased outreach presentations.

In this area, the District Attorney can offer concrete results based upon implemented prior proposals. In September of 2000, the District Attorney's Unit (in conjunction with the Riverside District Attorney's Workers' Compensation Insurance Fraud Unit and the Inland Empire Fraud Division Office) commenced hosting monthly consortium meetings open to those involved in the fight against workers' compensation insurance fraud. These meetings begin with a training session and conclude with a networking opportunity for the participants. We intend to continue hosting these meetings—providing training and conferring opportunities for those who would not otherwise be afforded same.

We also intend to continue our (now) standard practice of issuing press releases regarding every critical stage of an investigation/prosecution. We have received significant publicity regarding arrests and convictions resultant from Unit efforts (See Attachment E). We are resolved to continue issuing such releases as we have become convinced that publicity of



convictions obtained and sentences imposed has a significant deterrent effect. Since assignment to this Unit, Staff members have been told repeatedly that the mere fact of a single employee being investigated and prosecuted would have a deterrent effect on remaining staff. Frankly, we were skeptical. But letters and phone calls received after convictions (especially those reported in local newspapers as a result of Office-issued press releases) have made us believe. We always personally advise case designated contact people of the fact of the conviction. In the upcoming year, we will redouble our efforts to disseminate to the press the facts of our arrests, proceedings, convictions, and sentences. We will also offer to victim employers the opportunity to host an assembly of employees at which a Unit lawyer and investigator will explain the criminal process that resulted in the conviction of one of their own. Hopefully, such assemblies will deter future fraudulent claims.

Another effort planned by Unit Staff involves a combination of training and outreach. The Inland Empire is experiencing increased economic expansion involving an influx of businesses and potential employees. In an effort to act proactively, the District Attorney has designed a plan to advise potential employers and employees regarding the laws applicable to workers' compensation form in all of its forms, as well as his aggressive approach to investigation and prosecution of that fraud. That plan begins with insurance companies and employers. In the past, Unit Staff members have addressed audiences of employers/insureds regarding applicable laws, red flags of applicant fraud, and the approach taken by the District Attorney with respect to fraud prosecutions in this County. We plan a mailer to insurance companies in the two-county area advising of our availability and willingness to make presentations to their insureds and examiners regarding these topics.

) 5. Prioritization of the investigation of provider and employer fraud targets.

Continued, increased investigation of fraudulent medical and legal providers, and employers who illegally deny benefits, is the next logical step for this Unit, and one that the District Attorney is most eager to take. The investigation targets are specifically described in Attachment D. These investigations are currently in progress.

## COUNTY PLAN PROGRAM STRATEGY

2. Please elaborate on the District Attorney's plan for outreach to the public and private sectors.

The District Attorney utilized four avenues of public and private outreach during the last fiscal year. The methods utilized were community presentations, industry training sessions, press releases and continued dissemination of an informational pamphlet.

**A. Community Presentations.** As in years past, staff members from the District Attorney's Unit were recruited to speak at community functions and legal association events. During fiscal year 2002-03, Unit Staff presented to the following groups/associations on the indicated topics: The Applicant's Attorneys Association of the Inland Empire, "Criminal Prosecutions of Uninsured Employers", (11-20-02: @ 50 attendees); Victorville City Town Hall Meeting (sponsored by State Senator Pete Knight and State Assemblywoman Sharon Runner), "California Workers' Compensation System: Costs, Fraud and Proposed Solutions", (4-25-03: @ 100 attendees).

**B. Industry Training Sessions.** The Unit's Lead Deputy taught the following sessions to members of the insurance industry: The Southern California Fraud Investigators Association, "W.C.A.B. Depositions and Criminal Prosecutions", (11-13-02: @ 50 attendees) and "Jurisdiction, Materiality and Discovery Issues in Workers' Compensation Fraud Prosecutions", (11-11-02, @ 75 attendees); Southern California Risk Management Association, "The Role of Claims Examiners in Workers' Compensation Fraud Prosecutions", (11-20-02, @ 50 attendees); S.N.A. Statewide S.I.U. Training Seminar, "How to Get the Gosh-Darned D.A. to File a Workers' Compensation Applicant Fraud Case", (4-29-03: @ 50 attendees); W.C.F. Consortium Meeting, "W.C.A.B. Depositions and Criminal Prosecutions: Thoughts and Tips", (9-4-02: @ 50 attendees); W.C.F. Consortium Meeting, "The Impact of Assembly Bill 749 on S.I.U. Investigators", (12-4-02: @ 65 attendees); W.C.F. Consortium Meeting, "Presenting Premium Fraud Cases to the Criminal Grand Jury", (4-2-03: @ 60 attendees).

No requests to present proffered to Unit Staff were rejected; we accepted every invitation and presented at every opportunity we were offered.

**C. Press Releases.** For the third consecutive year, Unit Staff made a conscientious effort to publicize our anti-fraud efforts. Every arrest made by Unit Investigators resulted in a press release (written by the case Investigator or Senior Investigator and proof-read by the Supervising Deputy District Attorney) recounting the name, age, residential community of the arrestee, and the factual circumstances justifying the arrest. Every conviction (be it by way of plea or jury verdict) was also documented in a press release authored by the Deputy District Attorney assigned to the case. Finally, every sentencing hearing prompted a press release authored by the lawyer who appeared for the People at the hearing. Each of these press releases was forwarded to the District Attorney's Executive Assistant (who also acts as the Public Information Officer) who released the information to over seventy-five news organizations. In turn, Unit Staff copied and disseminated to the victim companies any press release regarding a case in which they are the victim, in order to assure the victim that we are doing our best to publicize the efforts made to prosecute fraudsters. Attached to this

application are some of press releases regarding cases handled by Unit Staff during the last fiscal year. (See Attachment E).

**3. Informational Pamphlet.** During Fiscal Year 2000-2001, the Unit Lead Deputy District Attorney authored an informational pamphlet designed to inform the employers/employees of both the rights and responsibilities of an injured employee and his employer. Due to the ethnic population of San Bernardino County, this pamphlet has been produced in both English and Spanish. The pamphlet is stocked in District Attorney's Offices countywide, and in unemployment offices, welfare department offices, temporary employment agencies, and small businesses. In short, the pamphlet is placed where it is most likely to reach those most likely to offend.

**E. District Attorney's Operational Plan for FY2003-2004:**

We plan to continue current outreach efforts in all phases described above. Unit Staff view speaking engagements as an immediate, relatively intimate forum in which to describe our function and tout our success rate. We have yet to turn down any opportunity to personally address any group or forum relevant to our charge. We also plan to continue issuing, at every opportunity, press releases advertising our efforts and achievements. We believe that publicity of our efforts is noted and has a cautionary effect upon those contemplating committing similar crimes. Admittedly, our evidence is totally anecdotal, but there is an extremely strong correlation between the appearance of a press item boasting our efforts and calls from area claims examiners and special investigators requesting information on prosecution standards. We do not view this "correlation" as a coincidence, and we hope to continue to exploit the local press to advertise our accomplishments and intolerance regarding workers' compensation fraud. Likewise, we will continue to place our informational pamphlets in locations most likely to reach those most likely to commit fraud.

## COUNTY PLAN PROGRAM STRATEGY

3. If the program does not have a full workload, please describe what steps the County will take to remedy the situation.

The District Attorney contends that all of the staff members of his Workers' Compensation Fraud Unit carry in excess of a full workload.

### A. Current Staff.

The District Attorney's Workers' Compensation Fraud Unit is currently comprised of two Deputy District Attorneys (Level IV), one Senior Investigator (Investigator II), three Investigators (Investigator I), one Secretary I and one Clerk III.

### B. Current Caseloads.

#### **Unit Deputy District Attorneys**

Throughout the last fiscal year, the Unit caseload has (at any given time) consisted of the following: between 28-35 cases pending trial or preliminary hearing; 8-15 cases set for sentencing or post-plea restitution hearing; and 60-75 cases at the "probation monitoring" stage. Per Unit policy, the Deputy assigned to a case appears at all court hearings, including arraignments, pre-preliminary hearings, preliminary hearing, pre-trials, assignment calendar appearances, jury trial, sentencing hearings and probation reviews. In addition, Unit Investigators and Fraud Division Investigators normally have approximately 20 cases under investigation at any given time; the Unit Deputies consult and advise regarding those investigations. Finally, between 10-30 cases are always at the "intake" stage, necessitating Deputy action: each suspected fraudulent claim, documented referral, case investigation and claim file received by the District Attorney is reviewed by a lawyer, who either accepts the case for investigation/prosecution, rejects the case, or requests further investigation. Any decision made by a Unit Deputy is communicated in writing to the person who submitted the case.

#### Lead Deputy District Attorney.

During the last two years, the San Bernardino District Attorney has received a (welcome) influx of premium fraud cases from Fraud Division Investigators. Additionally, due to appearances by the Lead Deputy at meetings of the Applicant's Attorney's Association, the Unit has received a number of (seemingly) valid referrals of employer fraud cases (i.e., benefit denial). Currently, the caseload of the Unit's Lead Deputy includes three multi-defendant, significant (i.e., fraud in excess of \$100,000; \$1 million; and \$2.5 million) premium fraud cases, and a four defendant money laundering case. Her caseload also includes an employer fraud case (denial of benefits), a "Three Strikes" applicant fraud case, and about ten "routine" applicant fraud cases. The Lead Deputy is also responsible for all intake review, teaching/outreach engagements, statistical reports and the grant application, staff evaluations, and other miscellaneous responsibilities.

#### Second Deputy District Attorney position.

The Unit's second Deputy District Attorney, Colleen Goggin, also manages an assigned caseload as well as administrative tasks. The majority of the active applicant fraud cases are

her responsibility—meaning she must be ready for preliminary hearing or jury trial on each of those cases simultaneously. Ms. Goggin also acts as the Office's liaison for the Workers' Compensation Fraud Consortium, attending all meetings and arranging the programs when his Office is assigned to present. She helps to perform the case review function by vertically handling some complex, applicant fraud investigations from intake to rejection/prosecution.

#### Unit Investigators

Unit Investigators conduct multiple case investigations simultaneously in order to maximize efficiency and case completion—whether the result is a filing or rejection. Working three or four cases concurrently minimizes the "downtime" experienced if a necessary witness (doctor, private investigator, court reporter or claims examiner) is unavailable for interview on a particular case; the investigator can simply schedule his interviews and scene examinations around the availability of the witness or the proximity of the scene rather than wait weeks until the witness's schedule opens up. Once a case is filed, the assigned Investigator is responsible for conducting any additional investigation needed prior to preliminary hearing, for testifying at preliminary hearing, and for serving subpoenas personally upon any lay witnesses needed to testify at preliminary hearing. Likewise, each Investigator maintains responsibility for his cases through jury trial, and is responsible for conducting any investigation necessary to ready the case for trial and acting as Investigating Officer during the trial.

Of course, the Senior Investigator also acts as supervisor; he assigns the cases, reviews reports, prepares the investigative staff work performance evaluations, and acts as Unit liaison with the local Fraud Division branch. One of the Investigators is assigned to the District Attorney's Special Response Team (a group of investigators trained to provide special security detail for dignitaries and during extraordinary safety situations, such as immediately after the September 11 attacks or during the Los Angeles riots a few years ago). All of the Investigators attend the monthly consortium meetings and avail themselves of all training opportunities. All of the Investigators must maintain peace officer status pursuant to Penal Code section 830.1, which entails monthly firearms qualifications and completing a requisite number of hours of POST-certified training annually.

#### Unit Clerical Staff

A Secretary I and Clerk III provide the clerical support for the two lawyers and four investigators assigned to the Unit. They are responsible for handling all of the incoming and outgoing mail; telephonic messages and case referrals; preparation of intake cases for review; preparation of cases for filing; preparation of all documents and discovery necessary for case filing; subpoenaing the necessary medical records and Workers' Compensation Appeals Board documents necessary for presentation to a jury; and witness coordination for preliminary hearings, grand jury proceedings, and jury trial. They also maintain all of the filing systems utilized by the Unit in accordance with Office and State Bar regulations regarding file retention and destruction.

The Unit Secretary is also the spearhead of the Unit's restitution recovery and probation review program. These tasks necessitate research regarding the three major terms of each defendant's probation (i.e., service of jail time, performance of unpaid community service and payment on various monetary accounts, including victim restitution), and compiling a report regarding each probationer's compliance with those terms. She also assists the Unit Lead

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Deputy in completing the mid-year and year-end statistical reports and grant application for submission to the Department of Insurance.

The Unit Clerk III performs most of the filing and file maintenance tasks. She tracks discovery to ensure that each defense counsel is provided all discovery on each case, thus relieving the minds of the Unit Deputies regarding their compliance with Brady obligations. Among her many tasks, she has also assumed a critical role in assisting the Unit Lead Deputy with intake and case review: she tracks the requests for claim files and follow up investigation at designated time intervals, and contacts the submitting party (often, repeatedly) until the material requested is received. Due to her efforts in this regard, not only is the Lead Deputy relieved of this time-consuming and, sometimes, unpleasant task, but also many cases that would otherwise "fall between the cracks" get filed because of her persistence and determination.

### C. Caseload-Staff Analysis.

The active Unit caseload of around thirty cases has remained stable throughout the last three years. The list of cases under and awaiting investigation has remained stable at around fifteen or twenty cases. Neither the Unit Deputies nor the Unit Investigators have lacked for work in the last fiscal year. The clerical staff is also routinely busy handling day-to-day communications, case-filing duties, and intake responsibilities.

Frankly, at this point, the workload of this Unit exceeds current staffing levels, particularly insofar as the attorney staff is concerned. Although the number of cases handled by the attorney staff has remained constant, the complexity and significance of a great many of those cases has radically changed. Based on the contents of Attachment D, there is no reason to expect the work load to decrease, and every reason to anticipate a steady, even increasing level of incoming complex cases. As indicated infra, the Lead Deputy is currently prosecuting three complicated, multi-defendant premium fraud cases. Two of the defendants in the most significant premium fraud case are also charged (along with two other defendants) in a thirty count money laundering case, the first of this type of case ever handled by the Unit or Lead Deputy. One employer fraud case is pending, and another is under investigation. The Lead Deputy receives between 10-15 requests to participate or present in public meetings and at training sessions annually. Monthly reports to District Attorney hierarchy, biannual statistical reports and an annual grant application eat up time. Perhaps the most time consuming task performed by Unit Deputies is intake; claim files are enormous and (for the most part) disorganized; requests for follow up and additional documents or records common, and each file is usually reviewed three or four times prior to a final decision concerning filing or rejection can be made. And, of course, the day-to-day work involved in preparing criminal cases for filing, for presentation to a judge at preliminary hearing and to a jury at trial consume an enormous amount of effort and time. Just making a court appearance on a case filed in one of the ten courthouses in the largest county in the nation can consume an entire day.

Current attorney staff is working at above capacity. The addition of a third lawyer to Unit Staff would be a godsend. Such an addition would permit the Lead Deputy to concentrate on premium fraud, provider fraud, and employer fraud cases, and continue performing the intake function and outreach/training efforts. The Unit's second lawyer could assume responsibility for the more difficult or complex applicant fraud cases and continue performing the duties of

liaising with the Workers' Compensation Fraud Consortium. And the third lawyer could handle the simpler applicant fraud cases, and the calendar appearances concerning restitution and dispositional hearings that are critical to our mission but can involve a half-a-day spent waiting in a courtroom or judge's chambers. The District Attorney respectfully requests that the Fraud Assessment Commission consider granting this request and allocate the funds necessary to ensure the continued smooth running of this Unit.

**COUNTY PLAN  
PROGRAM STRATEGY (Continued)**

4. As part of the overall management plan, describe how the District Attorney will achieve the objectives of the program. Describe the hiring plan, activity plan, and time line schedule for the program. Discuss the internal quality control procedures that are in place or will be employed to assure objective achievement. Discuss the budget monitoring procedures that are in place or will be employed.

**A. Hiring Plan: *Authorization to add an attorney to Unit Staff.***

The workload of the Unit Attorneys is prohibitively large. The current active caseload (that is, cases wherein the defendant has been brought before the court, and is pending preliminary hearing, trial or sentencing), although fluid, numbers approximately thirty cases at any given time. Currently, these cases are split approximately evenly between the two Unit Attorneys. The Lead Attorney's caseload includes the three pending (all co-defendant) premium fraud cases, the (four-defendant) money laundering case, and approximately ten applicant fraud cases (including one three-strikes case), five of which are pending trial. The Lead Attorney also handles approximately 90% of the intake matters, reviewing suspected fraudulent claim forms and documented referrals; ordering, organizing and reviewing claim files; requesting follow up materials; determining which cases are criminally prosecutable and drafting the charges, witness list and request for investigation as to those cases; determining which cases are not appropriate for prosecution and writing rejection letters. She also performs the bulk of the training and outreach presentations, which number between ten and fifteen annually. She authors the yearly grant application and both the mid-year and year-end statistical reports required by the Department of Insurance. She also prepares a monthly report for submission to the management of the District Attorney's Office.

The second attorney assigned to the Unit carries a caseload commensurate to that of the Lead Deputy, except that her cases are filed in both the San Bernardino and Victorville courthouses necessitating extensive traveling time. She handles about 10% of the intake function, frequently reviewing complex and/or confusing cases regarding which the Lead Attorney needs a second opinion about disposition. She manages this Office's participation in the monthly consortium meetings, attending all meetings and preparing the programs for the three monthly meetings for which this Office provides training modules.

And analysis of the following factors indicates that the attorney component of the Unit workload will only increase: objective evaluation of the economic factors listed in the County Problem Statement; the increasing number of investigations and prosecutions undertaken by Unit Staff; and anticipated increased outreach and caseload responsibilities due to Labor Code section 3700.5 matters. In order to most effectively investigate and prosecute criminal workers' compensation fraud cases, increase our outreach and training efforts, and continue to properly administer this program, an attorney should be added to the Unit Staff.



## **B. Activity Plan: Implementation of Objectives.**

The following activities will be undertaken in order to meet the goals specified in the County Plan:

1. The third attorney position will be filled. The Assistant District Attorney (Special Units) and Chief Deputy District Attorney (Central Division) will assign a Deputy District Attorney (Level IV) to join the Unit Staff. Emphasis will be placed on expediting the training afforded this lawyer, so that s/he can quickly assume the responsibilities of handling a felony caseload.
2. The respective duties of the Unit lawyers will be reevaluated and reassigned. The Unit Lead Attorney will retain the premium fraud and money laundering cases, and handle any newly filed premium fraud cases and provider fraud cases. The second and third lawyers will split the applicant fraud cases and uninsured employer cases for their respective caseloads. More intake duties will be handled by the Unit's second lawyer.
3. Efforts will be expended to add additional Labor Code section 3700.5 cases to the Unit caseload.
  - A. The Unit Lead Deputy District Attorney will continue her current outreach efforts designed to publicize the Unit's mandate and willingness to prosecute these misdemeanor offenses. She will maintain contact with the Applicant's Attorneys Association and the Information and Assistance Officer of the local Workers' Compensation Appeals Board.
  - B. The Supervising Deputy District Attorney and Unit Lead Deputy District Attorney will meet with the (newly assigned) Superior Court Presiding Judge to brief him regarding Labor Code section 3700.5 cases (e.g., the type of case involved and appropriate probationary terms).
4. The ongoing investigations described in Attachment D will be completed, and rejected/filed within this fiscal year. Particular emphasis will be paid to completing and publicizing those investigations and prosecutions involving provider fraud in the Inland Empire.
5. The Unit Staff will coordinate and present Training Day, 2004.
6. The Unit Staff will continue to co-host (with the staffs of the Riverside District Attorney's Office and the Rancho Cucamonga branch of the Fraud Division) monthly consortium meetings to provide training and networking opportunities to those involved in fighting workers' compensation fraud.
7. Unit Investigators will continue to regularly file felony complaints against those who commit workers' compensation fraud, and will expedite the arrest of the defendants.
8. Unit Deputy District Attorneys will prioritize resolution of felony cases (either by way of plea or trial).
9. Unit Lead Deputy District Attorney and Unit Secretary will continue to timely submit mid-year and year-end statistical reports, and the grant application for FY2002-2003 to the Department of Insurance; Unit Lead Deputy District Attorney will continue to timely submit Unit status reports monthly to District Attorney management.
10. Supervising Deputy District Attorney and Unit personnel will attend Fraud Assessment Commission meetings.

**C. Time Line: Anticipated Monthly Activity.**

- July of 2003:
  - I. Unit Lead Deputy District Attorney and Unit Secretary prepare year-end statistical report for submission to the Department of Insurance and Fraud Assessment Commission.
  - II. Supervising Deputy District Attorney and Unit Lead Deputy District Attorney attend the Review Panel Session regarding the grant application submitted for fiscal year 2003-2004.
  - III. Filing of three felony complaints by Unit Staff Investigators.
  - IV. Completion of one jury trial by Unit Deputy.
- August of 2003:
  - I. FY2003-2004 award is received. If monetary award permits adding staff, the attorney position opening is addressed by the Chief Deputy District Attorney and a new lawyer is assigned to the Unit.
  - II. Supervising Deputy District Attorney, Lead Attorney and Senior Investigator attend Fraud Assessment Commission meeting.
  - III. Assigned Deputy prepares for first consortium meeting of the fiscal year; program preparation; speaker invitation; reminder notices to invitees prepared and sent by Unit Secretary.
  - IV. Lead Deputy District Attorney attends training conference hosted by Continuing Education of the Bar (in San Bernardino) regarding the newly-enacted "HIPPA" law governing the release and use of medical records in civil and criminal cases.
  - V. Unit Investigators file three felony complaints.
  - VI. Supervising Deputy District Attorney and Lead Deputy District Attorney meet with Supervising Superior Court Judge to prepare for increased case filings from Unit under Labor Code section 3700.5, and to propose standard disposition and probationary terms to govern cases.
  - VII. Completion of one jury trial by Unit Deputy.
- September of 2003:
  - I. San Bernardino District Attorney hosts and presents inaugural consortium meeting of fiscal year.
  - II. Newly assigned Unit Deputy joins Unit; receive in-house training.
  - III. Unit Investigators file three felony complaints.
  - IV. Completion of one jury trial by Unit Deputy.
- October of 2003:
  - I. Unit Staff attends annual training conference of the Southern California Fraud Investigators Association; Unit Lead Deputy District Attorney presents two hours of training regarding workers' compensation fraud issues.
  - II. Unit Investigators file three felony complaints.
  - III. Completion of one jury trial by Unit Deputy.

- November of 2003:
  - I. Assigned Deputy prepares for December consortium meeting; program preparation; speaker invitation; reminder notices to invitees prepared and sent by Unit Secretary.
  - II. Completion and submission of "Request for Supplemental Funding" (from the reserve), if necessary.
  - III. Unit Investigators file three felony complaints.
  - IV. Completion of one jury trial by Unit Deputy.
- December of 2003:
  - I. San Bernardino District Attorney hosts December Workers' Compensation Fraud Consortium Meeting.
  - II. Unit Investigators file four or five felony complaints.
  - III. Completion of one jury trial by Unit Deputy.
- January of 2004:
  - I. Unit Lead Deputy District Attorney and Secretary complete mid-year statistical report for submission to the Department of Insurance and Fraud Assessment Commission.
  - II. Supervising Deputy District Attorney and Unit Lead Deputy District Attorney attend Review Panel meeting to defend request for supplemental funding.
  - III. Unit Lead Deputy District Attorney begins preparation for Training Day 2004.
  - IV. Unit Investigators file four or five felony complaints, three misdemeanor (L.C. 3700.5) complaints.
  - V. ~~Completion of one jury trial~~ by Unit Deputy.
- February of 2004:
  - I. Assigned Deputy prepares for March consortium meeting; program preparation; speaker invitation; reminder notices to invitees prepared and sent by Unit Secretary.
  - II. Unit Investigators file four or five felony complaints, three misdemeanor (L.C. 3700.5) complaints.
  - III. Completion of one jury trial by Unit Deputy.
- March of 2004:
  - I. San Bernardino District Attorney hosts March Workers' Compensation Fraud Consortium meeting.
  - II. Unit Staff attends CDAA Spring Insurance Fraud Seminar.
  - III. Unit Investigators file four or five felony complaints, three misdemeanor (L.C. 3700.5) complaints.
  - IV. Completion of one jury trial by Unit Deputy.
- April of 2004:
  - I. Unit Investigators file four or five felony complaints, three misdemeanor (L.C. 3700.5) complaints.
  - II. Unit Staff hosts Workers' Compensation Fraud Training Day 2003.

III. Completion of one jury trial by Unit Deputy.

• May of 2004:

- I. Unit Investigators file four or five felony complaints, three misdemeanor (L.C. 3700.5) complaints.
- II. Supervising Deputy District Attorney and Unit Lead Deputy District Attorney attend RFA information session.
- III. Completion of one jury trial by Unit Deputy.

• June of 2004:

- I. Completion of grant application for Fiscal Year 2003-2004 by Unit Lead Deputy District Attorney and Unit Secretary.
- II. Unit Investigators file four or five felony complaints, three misdemeanor (L.C. 3700.5) complaints.

D. Internal Quality Control Measures: Monitoring Measures.

The Unit's Supervising Investigator oversees every criminal investigation undertaken by Unit Investigators, and prioritizes the production of thorough, complete investigations and investigative reports. The Unit Deputy District Attorneys are "vertically assigned" the handling of their caseload: that is, each lawyer handles a case from the filing of the complaint through the resolution of the charges. (The District Attorney is committed to vertical investigation and prosecution regarding all Unit work, as this policy ensures absolute responsibility and accountability on the part of the investigator and lawyer assigned to the case.) As is the ethical responsibility of all staff members in the District Attorney's Office, every Unit Staff member is committed to the fair and objective treatment of all parties involved in each investigation and prosecution. These staff members ensure the production of thorough and complete Unit output, and fair and objective treatment to all parties involved in each investigation and prosecution.

The Supervising Investigator consults virtually daily with each of the Investigators and assists in investigations when appropriate. The Unit Senior Investigator and Deputy District Attorneys confer daily on various aspects of cases that are at the intake, investigation, complaint filing, and trial stages. The Unit Senior Investigator is supervised by the Assistant Chief of the Bureau of Investigation (Special Units). The Unit's Deputy District Attorneys are supervised by the on-site Supervising Deputy District Attorney. Ultimately, the responsibility for Unit operations belongs to the Chief Deputy District Attorney (Central Division) and the Assistant District Attorney (Special Units).

Objective achievement can be measured in terms of: number of felony complaints filed; number and quality of case dispositions achieved; number, scope and complexity of new investigations initiated; number of training and outreach sessions completed by Unit Staff; continued compliance by probationers with restitution orders and other terms of probation. All of this data, as well as updates on all cases currently pending disposition and cases under investigation, is contained in a monthly report authored by the Lead Unit Deputy District Attorney and distributed to District Attorney Management (i.e., the Assistant District Attorney,

- the Chief Deputy District Attorneys, the Unit's Supervising Deputy District Attorney, the Chief of the Bureau of Investigation, and the Chief of the Management Services Division.)

E. Budget Monitoring Procedures: Auditing by Management Services Division.

All anticipated and proposed Unit expenditures are documented in writing and the purchase requests are routed to the Supervising Deputy District Attorney responsible for overseeing the Workers' Compensation Fraud Unit for approval before being forwarded to the District Attorney's Management Services Division. Approval of expenditures must also be granted by the Director of that Division. Thereafter, three competitive quotes are obtained as to all items to be purchased (as required by a policy newly implemented by the County Board of Supervisors). The lowest quote providing the requested service is adopted. The procedures employed by the fiscal operations division for this Office have been validated by several years of positive grant program audits.

Monthly, the Supervising Deputy District Attorney responsible for overseeing the Workers' Compensation Fraud Unit receives a budget report from Management Services, documenting to-date Unit expenditures and reserves.

**COUNTY PLAN  
PROGRAM STRATEGY (Continued)**

5. A "Joint Investigative Plan" must be properly developed and agreed upon by both District Attorney and the Fraud Division to create the framework for effective communication and resource management in the investigation and prosecution of insurance fraud. (A Joint Investigative Plan must be submitted in this application. County District Attorney and Fraud Division are required to develop and to follow the plan.)

**Goals**

San Bernardino prosecutors and the Inland Empire Investigators of the Fraud Division share common goals. In the short term, we seek to (1) be notified of all provable cases of insurance fraud; (2) prosecute each case, and; (3) obtain the maximum punishment appropriate under the law. Our long term goal is to dramatically reduce the incidence of insurance fraud in San Bernardino County.

**Receipt, Assignment, and Notification of Acceptance of Cases for Investigation**

Personnel of both Offices will meet on an as-needed basis, in addition to maintaining telephone or electronic mail contact, in order to avoid duplicative investigative efforts and to exchange information on new cases. These meetings will be attended by the Inland Empire Regional Office supervisors, both Unit Deputy District Attorneys (as available), and the Supervising Investigator of the Workers' Compensation Fraud Unit. The purpose of these meetings is to facilitate and encourage the exchange of information between both agencies regarding new referrals, open investigations and on-going prosecutions.

Upon the first referral, an initial determination will be made as to whether the case appears to be appropriate for further investigation and possible prosecution. A designated individual from either the Fraud Division or the District Attorney's Office will notify the referring source of any decision. This notice will advise the referring source that future consideration of the case will be accorded should additional evidence be submitted and so warrant. Additionally, the staff of the San Bernardino District Attorney's Workers' Compensation Fraud Unit personnel and the staff of the Inland Empire's Fraud Division shall prepare and exchange on a monthly basis an updated list of all assigned and opened cases reflecting the caseload of each agency.

In terms of case assignments, once the CDI Fraud Division assigns a case to an Investigator, the District Attorney's DDAs will be immediately notified (to eliminate duplication of effort) and a DDA will be assigned to assist in the investigation of and to prosecute the case. When a case is accepted for investigation and/or prosecution by the San Bernardino District Attorney's Workers' Compensation Fraud Unit, an immediate notification will be made to the Fraud Division, thereby eliminating duplication of effort.

In the area of premium fraud investigations, the possibility of joint investigations involving Fraud Division and District Attorney personnel shall be evaluated on a case-by-case basis. Since these cases are time consuming, a joint team approach to investigating these crimes should be utilized whenever possible.

A designated staff member from each agency shall notify a designated staff member from the corresponding agency via email when a case is accepted for investigation by that agency. For the Fraud Division: the Designated staff member is the Staff Services Specialist and for the District Attorney: the designated staff member is the Unit's Senior Investigator (or his designee, during times when the Supervisor is out of the office). The accepting agency is responsible for notifying the referring party that the case has been accepted for investigation.

#### **Upon receipt of a case/claim file:**

##### **DOI Cases**

The assigned DOI Investigator shall make a copy of the claim file for the D.A. as soon as possible, and arrange for the file to be delivered to the D.A. Upon receipt, the Unit's Lead Attorney will assign an attorney to review the file to evaluate the case, and, if the case is deemed prosecutable, draft a complaint and Request for Investigation (RFI). The assigned attorney will meet with the DOI Investigator, and discuss the case and provide the RFI to the Investigator. Thereafter, regular contact shall be maintained between the assigned attorney and investigator regarding the case, through the filing and disposition of the case.

##### **DA Cases**

The Unit's Lead Attorney will assign an attorney to review the file and evaluate the case. If the case is not prosecutable, the DDA will write a rejection or "Request for Follow Up" letter to the referring party. If the case is prosecutable, the DDA will draft a complaint and RFI and submit the case to the Unit secretary for copying of all materials. The original materials will be returned to the DDA and the copy forwarded to the Unit's Senior Investigator. The Unit's Senior Investigator will assign the case to a Unit Investigator as soon as possible. The assigned Investigator will contact the referring party/claims examiner, and advise of the case assignment.

#### **Case Referrals Between Agencies.**

If an Investigative Supervisor from either agency has an Investigator available to commence work immediately on a workers' compensation fraud case, but has no case ready for assignment to that Investigator, the Supervisor may call an Investigative Supervisor from the other agency and inquire if that agency has any unassigned cases ready for assignment to an Investigator. If that Supervisor does have unassigned cases ready for assignment, he will offer the case to the requesting agency. It is expected that any case offered/accepted for investigation under this term will be assigned and investigated promptly.

#### **Investigations**

San Bernardino's proactive Deputy District Attorneys will vertically investigate and prosecute every case. Regarding cases handled by Fraud Division Investigators, the Investigator shall communicate with the assigned prosecutor as soon as possible after the Investigator receives his investigative assignment. They will develop an investigative plan, which will include regularly scheduled meetings throughout the investigation. They will work together as a team to build the case from inception through final adjudication. The same prosecutor and investigators shall follow the case through each phase of the court process. Investigative updates are to be provided to the prosecutor on an on-going basis during the investigation. Thus, the prosecutor can insure that investigative resources are being used for work that is essential to the prosecution of the case. Vertical prosecution creates a close relationship between an investigator and prosecutor. A "vertical prosecution" for purposes of this Joint

Plan means that all supervisors and investigators will work together with the assigned DDA at the earliest possible opportunity in the investigation and build the investigation from inception through prosecution and final adjudication. The assigned prosecutor(s) shall be available to provide legal review and shall file cases warranting a criminal complaint or indictment. Ultimate prosecution or non-prosecution decisions shall remain entirely within the discretion of the District Attorney's Office. The prosecutor(s) shall retain sole charging, filing and settlement authority for all cases.

#### **Undercover Operations**

It is agreed that a Supervisor of the Fraud Division shall contact the Supervising Investigator of the District Attorney's Workers' Compensation Fraud Unit for surreptitious recording authority before conducting any undercover operations in San Bernardino County. Undercover operations will be conducted safely and professionally and in accordance with Fraud Division policy. The use of informants shall comply with the laws of the State of California and the policies of the Joint Plan participants. (See Attached Exhibit A, the San Bernardino District Attorney's standard agreement regarding use of informants.) The Supervising Investigator of the District Attorney's Unit and the Supervisors of the Fraud Division will discuss the continuing viability of such investigations during their as-needed meetings.

#### **Case Filing Requirements**

Case charging policy requires that the assigned DDA be satisfied at the time the complaint is filed that sufficient legally admissible evidence warrants conviction of the person charged beyond a reasonable doubt by a reasonable trier of fact.

The following information must be provided by the Investigator to the Deputy District Attorney predicate to a decision regarding case filing:

- (a) Complete investigative reports, include reports of interviews, all search warrants and affidavits in support, an index and summary of all documents, photographs, videos and other evidence that supports the charges;
- (b) Regarding applicant fraud cases: a complete copy of the claim file, including complete (non-redacted) claim file notes; regarding premium fraud cases: a complete copy of the policy file for every year involved in the investigation; all exculpatory evidence including evidence related to the credibility of witnesses, related to bias, motive and inducements to testify; copies of or access to all documents (other than those specified earlier in section (b)) that have been recovered in the course of the investigation, and a contact person to assist in discovery requests regarding said materials;
- (c) A list of all anticipated witnesses, including their addresses, telephone numbers, and dates of birth (dates of birth not required for law enforcement personnel);
- (d) Complete rap sheets (CII, FBI) on all suspects and witnesses (except law enforcement personnel);
- (e) DMV printouts and Soundex photos on all suspects;
- (f) Information regarding any inducements or agreements regarding the giving of information or testimony that may have been made to witnesses. The use of informant or cooperating witnesses shall be strictly governed by the District Attorney's policy regarding the use of informants and/or cooperating witnesses. A copy of this policy is attached to this agreement and its terms are incorporated herein by reference.



- (g) The name and telephone number of the Fraud Division Investigating Officer responsible for signing the declaration in support of the arrest warrant, and for conducting additional investigation, if necessary;
- (h) A certified copy of the deposition (if applicable).

### Training

The staff of the District Attorney's Workers' Compensation Fraud Unit and the Fraud Division will work to provide training in those areas most needed. We will attempt to provide regular training to new claims personnel and insurance company special investigation units, as well as examiners and investigators working for self-insured entities and third party administrators. Training will also be provided to more experienced personnel regarding areas of particular concern. Both offices are currently engaged in outreach efforts, and these efforts will continue; these efforts will either be jointly conducted or the parties will confer to insure that efforts are not duplicative. Both agencies will respond at the request of members of Special Investigation Units and other entities for training and educational assistance.

### Problem Resolution

Problems within the agencies tend to be minimal as members of each agency as working together on cases and unexpected results are unlikely. In the event a problem does arise, the investigator/prosecutor team should handle it. If needed, the Supervisor(s) from the Fraud Division and the Supervising Deputy District Attorney will meet with the parties to discuss and resolve the problem.

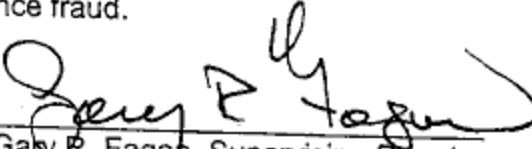
The prosecutor/investigator partnership between the San Bernardino District Attorney's Office and the Fraud Division have made San Bernardino County a location where insurance fraud victims want their cases filed. Our two offices have worked diligently to bring together the insurance industry, local and federal law enforcement, self-insured entities, and third party administrators to vigorously attack insurance fraud.

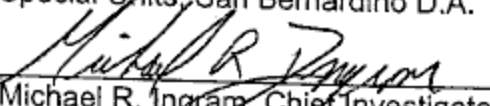
6/25/03

Date

6/24/03

Date

  
Gary R. Fagan, Supervising Deputy  
Special Units, San Bernardino D.A.

  
Michael R. Ingram, Chief Investigator  
Fraud Division-DOI  
Inland Empire Office

**San Bernardino County  
District Attorney's Office  
Informant Policy- Insurance Fraud**

The use of any informants or undercover operatives, who are not sworn peace officers, must be approved in advance by the District Attorney's office. The District Attorney, or his designee, alone, is authorized to grant the use of an informant. All agreements concerning past, current, pending or future consideration, including immunity, is solely and completely in the discretion of the District Attorney's Office.

A letter signed by the case agent, the agent's supervisor, and division chief must be submitted to the District Attorney's Office requesting the use of an informant. The letter must include a summary of what information the informant is expected to provide. The letter must include information concerning the informant's personal or business relationship to the targets of the investigation. The letter must include, the defendant's full name, aka's, date of birth, rap sheet, a listing of any pending criminal or civil cases, probation status, pending or past insurance or wcab claims.

The informant must execute the attached informant agreement. The agreement must be submitted with the application. If the informant has a pending criminal case in this county, additional information will be required.

**Informant Supervision**

All contacts between the informant and the target must be in the presence of a sworn officer, or recorded. The case agent will maintain a log of every contact or attempted contact the informant has with the target. The log will be reduced to a formal report, to be provided to the District Attorney's Office at case filing. Each contact resulting in a conversation with the target must be reduced to a formal report within 2 days. The case agent will maintain all recordings, photos and video of informant contacts as evidence. All applicable state and federal laws pertaining to electronic surveillance and wiretaps will be complied with.

The case agent must maintain control of the informant's activities. The case agent must remain in contact with the informant during the pendency of the investigation and subsequent prosecution and must be able to produce the informant for all interviews and court proceedings.

Penal Code §§ 701.5, and 4001.1 will be complied with.

### **Informant Policy- Insurance Fraud cont'd**

Any misconduct, including violations of law, or matters that could affect the credibility of the informant will be documented by the case agent and immediately submitted in writing to the District Attorney's Office.

### **Informant Conduct**

Informants are prohibited from carrying any dangerous or deadly weapon, including firearms. Informants are prohibited from participating in law enforcement activities such as arrests, searches of persons or places, surveillance when unaccompanied by the case agent, interviews of witnesses or suspects, report writing or editing, transcription of recorded contacts, unsupervised handling of evidence, and supervision of other informants.

**Informant Policy- Insurance Fraud cont'd**

Confidential Informant Agreement

I understand and make the following commitment in order to be used as an undercover informant for \_\_\_\_\_ [agency] and \_\_\_\_\_ [case agent]

1. The decision to charge me with a crime, recommend a sentence or grant immunity is solely in the discretion of the District Attorney.
2. The investigating agency or case agent has not promised me anything in exchange for my assistance.
3. The District Attorney has made the following promise:  
\_\_\_\_\_  
\_\_\_\_\_
4. I will remain in contact with the case agent in this case.
5. I will testify at any hearing, pre-trial proceeding, trial, retrial, or post trial proceeding of any defendant for which I am called as a witness, regardless of the party calling me.
6. I will testify truthfully at all times.
7. I will not assert my privilege against self-incrimination, my privilege not to be called as a witness, the attorney-client privilege, or any other privilege when called to testify, or while testifying.
8. I understand that if I willfully and knowingly testify untruthfully to any material fact in issue, while under oath, I will be subjected to prosecution for perjury, pursuant to Penal Code §118
9. My arrest while working as an informant will permit the District Attorney to terminate this agreement

\_\_\_\_\_  
(Informant)

Date: \_\_\_\_\_

Case Agent \_\_\_\_\_

## COUNTY PLAN PROGRAM STRATEGY

### 6. What other anti-fraud programs or units are maintained within the District Attorney's Office? How will this program be integrated with them?

The San Bernardino County District Attorney's Office currently maintains the following anti-fraud units: the **Automobile Insurance Fraud Prosecution Unit**; the **Urban Auto Insurance Fraud Prosecution Unit**; the **Real Estate Fraud Prosecution Unit**; the **Workers' Compensation Fraud Prosecution Unit**; the **Elder Abuse/Fraud Unit**, and the **Specialized Prosecutions Unit** (responsible for the investigation and prosecution of consumer fraud and environmental crimes). The District Attorney also maintains a **Major Crimes Unit**; should a fraud case draw unusual media exposure or necessitate the assignment of a seasoned trial lawyer, the case may be assigned to a lawyer in that unit. Finally, the District Attorney maintains a large **Welfare Fraud Prosecution Unit**.

The Workers' Compensation Fraud Prosecution Unit is well-integrated into the composition of the Office's Fraud Bureau. All staff members of the Fraud Units (except those of the Major Crimes Unit and Welfare Fraud Unit) are housed together in a business-district office building. The staffs of these respective units interact on a daily basis, sharing intelligence, ideas and strategies. Support staff backup and court appearance coverage in the event of sick/vacation leave is drawn from the members of other Units. "Unit-to-Unit" case referrals are commonplace, particularly from the Specialized Prosecutions Units' Consumer Protection Staff to the Workers' Compensation Fraud staff. The attorney staffs of all of the Units share an on-site Supervising Deputy District Attorney, which not only expedites problem solving and team building, but also is also integral in building relationships with other agencies involved in fighting fraud, including the Department of Insurance and Employment Development Department.

Perhaps the closest relationship among all of these Units is that between the staffs of the Auto Insurance Fraud and Workers' Compensation Fraud Units. Staff members attend the same training seminars, assist in serving each other's search warrants, and brief and share materials received from outside sources. Within the last several years, the attorney staffs of the two Units have made conscious efforts to keep each other apprised of published opinions relevant to fraud prosecutions and to share ideas and strategies designed to recover restitution from convicted defendants. As a result of these efforts, both Units have made more effective case presentations in court and have accomplished more beneficial settlements—ultimately to the benefit of the victim insurance companies.

Currently, the staffs of the Auto and Workers' Compensation Insurance Fraud Units are contemplating collaborating on a joint investigation involving a local doctor who appears to be involved in double-billing auto and work compensation carriers. This physician has treated the same claimant for claims involving both auto accidents and industrial injuries, and sent identical bills to both carriers. Moreover, he wrote reports pursuant to both claims but never notified the auto carrier of the industrial accident/claim (and related treatment) and never notified the workers' compensation carrier of the auto accident/claim (and related treatment). This case appears to present a promising investigative assignment for both Units.

Of all branches of the District Attorney's Office, the Fraud Units have, perhaps, the most current state-of-the-art technology to support investigative and prosecutorial efforts, including multi-media tools. The District Attorney recently created a **Graphic Arts Unit**, which is housed in the same off-site office as the Fraud Units. District Attorney Investigative Technicians man this Unit, and are committed to providing state-of-the-art trial support services—trial exhibits (including scanned photos), power point presentations, time-lines, and other illustrative documentary items—designed to assist the trial prosecutor.

Similarly, the Real Estate Fraud Unit staff has proved to be of an indirect yet enormous benefit to the Workers' Compensation Fraud Unit. The Investigative Technician assigned to that Unit is a computer expert. He has provided invaluable assistance regarding the provider fraud investigations.

Also on-site is the Office's State Restitution Unit. The staff of this Unit has assisted the members of the Workers' Compensation Fraud Unit in many ways, including assisting our efforts to recover restitution from convicted defendants sentenced to state prison.

## COUNTY PLAN PROGRAM STRATEGY

7. Describe the training that has been received by and is planned:

- a) for the County staff on workers' compensation insurance fraud;
- b) for the local Special Investigative Units to enhance the investigation and prosecution of workers' compensation insurance fraud, and;
- c) in coordination with the Fraud Division, insurers, or other entities.

### A) Training received by and planned for County Staff regarding workers' compensation fraud.

For several reasons, Unit Staff did not attend any costly or out-of-area training seminars during fiscal year 2002-2003. Save the second attorney position and one investigator assignment, the composition of Unit Staff has remained stable for a number of years; therefore, most of the training opportunities offered in the area of insurance fraud investigations/prosecutions have been attended by Unit Staff. (In short, attending expensive training seminars featuring repetitive topics and speakers, simply for the sake of boasting "training", hardly seemed the most efficacious use of our funding in these troubled budgetary times.) Moreover, incoming case referrals have increasingly focused on provider fraud, which are expensive and time-consuming investigations and prosecutions; hence, it seemed more appropriate to spend our funding to fuel those investigative or prosecutorial opportunities. Based on the foregoing considerations, the Unit Staff elected to take advantage of local, in-house, and written training opportunities in an effort to stay abreast of the most recent advances in the fight against insurance fraud.

The lawyer newly-assigned to the Unit's second attorney position, Deputy District Attorney Colleen Goggin, possessed strong fundamental knowledge in the field of workers' compensation law prior to her assignment as her father practiced as an applicant's attorney in Michigan throughout her childhood. Ms. Goggin also possesses broad knowledge and experience working with a prosecutor's office, as she served as the San Bernardino District Attorney's Victim Witness Coordinator for years while she attended law school. Given her specific background and qualifications, her assignment to this Unit was a godsend. In order to familiarize herself with employers and insurance defense attorneys prominent in this County, she attended the daylong "Employer's Seminar" hosted by prominent local workers' compensation defense firm, Hanna & Brophy. As the title indicates, the goal of this event is to educate and inform the firms' clients—mostly self-insured employers and staffs of third party administrators—about the different types of fraud prevalent in the system and efforts to combat that fraud. At this seminar, D.D.A. Goggin participated in several "round-table" discussions with employers whose businesses are located in San Bernardino County, and explained our procedures to those individuals. Finally, Ms. Goggin also attended eight of the nine meetings of the Riverside-San Bernardino Counties Workers' Compensation Fraud Consortium. During those meetings, she has learned about the inner workings of the Workers' Compensation Appeals Board, the approaches utilized by various special investigation units in the investigation of criminal cases, and how other counties are approaching the prosecution of

Labor Code section 3700.5 cases. By attending these consortium meetings, she has established strong working relationships with Deputy District Attorneys and District Attorney Investigators, and Fraud Division Investigators from the other, neighboring counties represented at consortium meetings (i.e., Riverside, Los Angeles, and Orange Counties).

Two members of the Unit Investigative Staff also attended the "Employer's Seminar". The investigators attend largely to participate in the "round table" sessions, during which they introduced themselves to area self-insured employers and made themselves available to answer questions and network. In addition, nearly all of the District Attorney Investigators attended every session of the Workers' Compensation Fraud Consortium meetings, thus receiving the training offered there. Investigator Samaniego also attended a one-day seminar offered by the Southern California Fraud Investigators Association focused on new techniques in fraud investigations.

Although this section specifically requests data regarding training in the area of workers' compensation insurance fraud, the District Attorney respectfully requests that the Review Panel also consider the mandatory training completed by Unit Investigators in order to maintain peace officer status pursuant to California Penal Code section 830.1. State law and the Peace Officers Standards and Training Committee require that peace officers complete an annual quota of training in certain areas. Much of this training is essential to ensure officer safety (for example, all of the Investigators are required to qualify monthly in firearms proficiency) and criminal records security (for example, mandatory training in the use of the CLETS, CNI and CII systems). When afforded a choice regarding mandatory training necessary to meet Standards Committee requirements, Unit Investigators requested and completed training opportunities that directly enhanced their capabilities to investigate and manage workers' compensation fraud cases. In the last fiscal year, Unit Investigators received training regarding the following topics: Wiretapping Legal Update; Elder Abuse and Hate Crimes Investigations; Conducting Background Investigations; Racial Profiling; and Use of the Trauma Kit (rape investigations). Finally, during the last fiscal year, the Unit's Senior Investigator completed a year-long "Supervisor Leadership Institute", a POST-mandated training program for all state law enforcement supervisors regarding management and supervision techniques in the law enforcement arena.

Should funding permit and should personnel training be deemed the most efficacious use of the Unit's grant funding, several new, national level training opportunities will be pursued. These training opportunities include the annual seminars of the International Association of Special Investigation Units and the Association of Certified Fraud Examiners. In addition, the local training opportunities afforded by the annual seminars of the California District Attorney's Association on Insurance Fraud and the Southern California Fraud Investigator's Association are always worthwhile. Finally, Unit Staff plan to continue attending all Workers' Compensation Fraud Consortium meetings (which include a training component) and the Hanna & Brophy seminars.

**B) Training received by and planned for the local Special Investigative Units, to enhance the investigation and prosecution of workers' compensation fraud.**

During FY 2002-2003, Unit Staff provided and hosted numerous training opportunities to benefit the staffs of local special investigation units and groups of claims examiners. The



training sessions were provided in two milieus: both specifically at the workplace of the investigators/examiners, and at the monthly workers' compensation fraud consortium meetings hosted tri-monthly by Unit Staff.

The training sessions provided directly to workers' compensation fraud investigations and prosecutions were taught by Lead Deputy District Attorney Bartell. Ms. Bartell taught four training sessions directed toward the line personnel involved in these specialized prosecutions. (Parenthetically, please note that Ms. Bartell taught at every opportunity that was offered to her.) In November of 2002, at the invitation of the acting Special Investigation Unit (RJN Investigations), Ms. Bartell and D.O.I. Fraud Division Chief Investigator Michael Ingram addressed approximately fifty claims examiners employed by third-party administrator Southern California Risk Management Association. This presentation covered, among other topics, the following: general fact patterns involved in workers' compensation fraud cases; "materiality" within the context of workers' compensation fraud cases; restitution available through the criminal system; the relationship between WCAB and criminal proceedings in workers' compensation fraud cases. Ms. Bartell was also invited to teach a beginning and an advanced session at the annual training conference of the Southern California Fraud Investigator's Association (SCFIA) which was conducted in November in Palm Springs. At the "Introductory" session, Ms. Bartell addressed approximately fifty individuals regarding, "Workers' Compensation Depositions and Criminal Prosecutions". During the "Advanced" session, Ms. Bartell addressed an audience of approximately seventy-five people regarding the topics, "Jurisdictions, Materiality and Discovery in Criminal Workers' Compensation Fraud Prosecutions". According to the speaker evaluation response cards, both presentations were well received; this was the third consecutive year Ms. Bartell was invited to teach at this seminar. Finally, in April of 2003, Ms. Bartell accepted the invitation to address approximately fifty SIU investigators employed by C.N.A. Insurance at the company's state-wide training conference in Brea: she addressed the topic, "How to Get the "Gosh-Darned D.A. to file an Applicant Fraud Case".

Other training sessions provided by Unit Staff included Ms. Bartell's presentations on behalf of the San Bernardino District Attorney at the monthly Workers' Compensation Fraud Consortium Meetings. These monthly training and networking meetings are designed to assist and educate those professionals involved in fighting workers' compensation fraud. Regular attendees include staff members from Special Investigation Units (Golden Eagle Insurance Company, State Compensation Insurance Fund, Republic Indemnity Insurance Company), personnel from third party administrators (Southern California Risk Management Association, Intercare Insurance), private investigation firms (RJN Investigations, DeSoto Investigations, Paul Chance Investigations), insurance defense counsel, and employees from the District Attorney's Offices of Los Angeles, Orange, Riverside and San Bernardino Counties. Each meeting begins with a thirty-minute training session. In fiscal year 2002-2003, Ms. Bartell addressed the following topics: in September of 2002, Ms. Bartell previewed her SCFIA presentation on the relationship between WCAB depositions and criminal prosecutions for an audience of about fifty people; in December, she presented and moderated a panel discussion regarding the impact of the provisions of Assembly Bill 749; and in April of 2003, she addressed the topic of "Premium Fraud Case Presentations to the Grand Jury" to an audience of about sixty people.

Future training plans include continued participation by Unit Staff in hosting and providing training at the three-four annual monthly Workers' Compensation Fraud Consortium meetings hosted by the San Bernardino County District Attorney. And, of course, Unit Staff will always provide training whenever requested by industry personnel, to the extent possible considering trial and court appearance schedules.

**C) Training received by and planned in coordination with the Fraud Division, insurers or other entities.**

As indicated above, training sessions are a regular part of the monthly consortium meetings jointly hosted by the San Bernardino and Riverside District Attorney's Offices and the Rancho Cucamonga branch of the Department of Insurance's Fraud Division.

The only training planned for fiscal year 2002-2003 which did not take place involved a seminar on premium fraud; the conflicting schedules of the speakers and the Unit Staff were impossible to coordinate. Hopefully, this year the San Bernardino District Attorney will be able to host this seminar, which will include training on the following topics: The NICB Premium Fraud Project; Premium Fraud and Its Factors; and Premium Fraud Case Studies. The seminar speakers will include NICB Special Agent John Mulloy and Liberty Mutual SIU Supervisor Neil Johnson.

## COUNTY PLAN PROGRAM STRATEGY

### 8. Describe staff rotational policies that affect the program.

#### Unit Deputy District Attorneys

Both Unit Deputies are assigned to the Unit on an "open-ended" basis. Transfer of the Unit Deputy District Attorneys is at the discretion of the Assistant District Attorney (Administration/Special Units) and the Chief Deputy District Attorney (Central Division). Should they deem necessary the reassignment of either or both of the current Unit Deputies, the Chief Deputy would assign to the Unit a replacement lawyer (or lawyers) commensurately experienced and skilled to assume the duties of the vacating attorney(s). Noteworthy (depending upon one's perspective) is that the Unit's Lead Deputy District Attorney has held the position since January of 1997. The Unit's second attorney position has been "manned" by two lawyers, the current holder of the position being the second attorney assigned to fill the slot.

#### Unit Investigators

Likewise, the assignment of all Unit Investigators is "open-ended", and their transfer is at the discretion of the Chief of the Bureau of Investigation. Should such transfer occur, replacement with equally skilled personnel should be anticipated. Past transfers of or additions to Unit investigative personnel have resulted in the assignment of experienced, skillful and hard-working Investigators to the Unit Staff.

#### Unit Clerical Staff

The current Unit Secretary was hired in January of 1999 specifically for the position of Unit Secretary I. Her assignment is permanent. A requested funding increase two years ago resulted in the hiring of a Clerk III to assist the Unit Secretary with the numerous, complex Unit clerical tasks. Her assignment is also permanent.

## COUNTY PLAN PROGRAM STRATEGY

9. Labor Code section 3820 clearly sets forth the legislative intent that funds used to combat workers' compensation insurance fraud are to come from the Fraud Account and that those funds should be partly produced by the imposition of the penalties in this section. Describe the County's efforts and the District Attorney's plan to obtain restitution and fines imposed by the court to the Fraud Account as the legislative intent specifies.

### A. Restitution Collections.

Penal Code section 1202.4 mandates that victim restitution be ordered as a sentencing term in every case in which a victim suffers monetary loss. In San Bernardino County, the collection and distribution of court-ordered restitution are tasks assigned to the Central Collections Division. However, insofar as restitution ordered as a result of a conviction on a workers' compensation case, District Attorney Unit Staff are actively involved—from case commencement through disposition, and throughout the probationary period—to ensure that the proper amount of restitution is ordered, collected, and promptly distributed to victim companies or agencies. This commitment extends to each case and every defendant, and involves the use of both criminal and civil remedies.

Our involvement begins at the case filing stage. The Unit Lead Deputy District Attorney is responsible for ensuring that the reports filed in court to justify the felony complaint against, and support the issuance of the warrant of arrest for the defendant(s), contain complete information regarding restitution (e.g., the contact person for each victim company; the amount owed to each victim in various loss categories-- the amount of permanent disability paid linked to the fraud committed by the defendant; the amount of medical expenses paid linked to the fraud committed by the defendant; the amount of lost premium for each policy year linked to the fraud committed by the defendant). The inclusion of this information accomplishes several goals. First, the judge responsible for setting bail on a warrant for the defendant's arrest is fully aware of the amount of loss, and can set a bail commensurate with the loss caused by the defendant's criminal acts. Second, the defendant's victim(s) and the Deputy District Attorney assigned to prosecute the defendant are assured that the correct amount of restitution is included as a term of any plea agreement. Finally, a probation officer assigned to write a sentencing recommendation on a Unit defendant has ready access to the victim contact person, and can easily contact that person and obtain any information necessary to either update the restitution amount or fashion an appropriate sentence for that particular defendant.

The Unit Deputy District Attorneys have structured a plea bargaining policy that emphasizes the importance of restitution in resolving workers' compensation cases. This policy is based upon the realization that the average defendant in a workers' compensation fraud case has either no prior record or a minimal record (i.e., conviction for a traffic or minor misdemeanor matter). Based on the lack of prior contact with the criminal justice system, these individuals are not typical candidates for a state prison sentence or even a lengthy county jail commitment. Moreover, such normally "law abiding" individuals are also extremely traumatized by their first exposure to penal confinement. Having once experienced the

booking and jailing procedures, their main priority is invariably avoiding a repetition of those experiences. Therefore, the plea offers tendered by the District Attorney in workers' compensation cases generally include a plea to a felony charge, a three to five year probationary term, up to ninety days in jail, and restitution. However, the plea agreement includes additional conditions—those being, should the defendant pay a specified percentage of the restitution total by cashiers' check on the date of sentencing, jail time would be stayed and the defendant would instead perform a specified amount of unpaid community service (between 50 and 250 hours) depending on the amount and type of fraud; and, should the defendant pay the full amount of restitution owed to all victims on the date of sentencing, the District Attorney would reduce the defendant's conviction status to a misdemeanor prior to the actual sentencing.

This policy results in several benefits. Since its implementation, a surprising number of defendants pay off the restitution obligation in full immediately in order to obtain misdemeanor status of the conviction (increasing their chances of obtaining employment). The victim insurance companies are happy to receive large sums of restitution without having to wait months for Central Collections staff to collect and distribute the money. Judges are happy because already limited jail space can be used to house serious and violent felons.

Of course, some defendants pay only the amount of restitution necessary to avoid jail time. For those individuals, the implicit understanding of the plea agreement is the explicit promise that once the defendant has paid off all restitution and fine obligations and completed any jail or community service commitment, the District Attorney will reduce the conviction status of the charge from felony to misdemeanor. This term motivates defendants whose job possibilities are significantly limited by a felony conviction to successfully complete their probationary terms as quickly as possible. And the benefits outlined above accrue, albeit not as quickly.

One further note: during the probationary period of the defendants convicted by the Workers' Compensation Insurance Fraud Unit, Unit Staff actively monitor the conduct of every defendant to determine compliance with his/her probationary terms. In certain cases, the Unit Deputy asks the sentencing judge to set a future court date for "probation review" (six or twelve months post sentencing, depending upon the amount of restitution ordered) and order the defendant to appear at that hearing. Regarding those cases for which the Unit Deputy does not request a formal court probation review hearing, the Deputy requests that the Unit Secretary review the defendant's compliance with his restitution obligation at specified time intervals. Should any defendant fail to comply with any probationary term, the Deputy files a petition to revoke probation and calendars a court date so the defendant can be returned to the penal system.

After each sentencing hearing, the Unit Deputy includes in the file postings a notation directing the Unit Secretary to calendar the case for preparation of either a formal (for defendants scheduled for a court probation review) or informal (for defendants scheduled for internal review only) restitution review report. This report is prepared by the Unit Secretary; in it, she summarizes the relevant facts and probationary terms of the case, then provides detailed information regarding the defendant's compliance (or non-compliance) with those terms. For example, she indicates whether the defendant was sentenced to serve custody time or community service hours, then contacts either the jail or volunteer center coordinator and obtains information specific to the defendant's compliance with that term, and includes

that information in the written report. She also obtains information regarding the defendant's payments on every account set up relative to the case (restitution, fine payment, probation supervision) with probation accounting, and lists every single payment made on each account by the defendant.

If the case is one that is monitored internally, the assigned Deputy District Attorney reviews the restitution report and determines an appropriate course of action—continuing the defendant on probation or filing a petition to revoke probation. If the Deputy determines that the defendant is complying with probation, the file is returned to the Unit Secretary with instructions to prepare a review report at a future date certain. If the defendant is not complying with probation, a petition to revoke probation is filed by the Deputy District Attorney (and the procedure outlined below is followed).

If the case is set for a court hearing regarding probation compliance, the report prepared by the Unit Secretary is faxed to the judge scheduled to preside over the probation review hearing. If the defendant is complying with all probationary terms, he is continued on probation and another review hearing is scheduled six or twelve months hence. If he is violating any probationary terms, generally a judge will grant the Unit Deputy's request for a shortened review time (four to six weeks) enabling the Deputy to file a petition to revoke probation and giving the defendant the opportunity to correct his deficiencies. Once the petition to revoke probation is filed and the defendant returns to court, the judge orders probation revoked and the matter referred to the probation department for a supplemental report regarding the sentence appropriate to the defendant's violation. The defendant is ordered to report to the probation officer, who interviews the defendant regarding his earnings and expenses, and determines whether the defendant has been making the maximum efforts to comply with his probationary terms. The probation officer submits a report to the court, summarizing the defendant's statements and making a recommendation regarding the probation revocation. Normally, the defendant returns to court six-to-eight weeks after the probation interview, is sentenced to additional jail time or community service, and lectured by the judge regarding the obligation to pay restitution.

These monitoring efforts are expended regarding every probation compliance hearing on every case, and every defendant convicted by Unit efforts is monitored until probation is either successfully completed or revoked and the defendant is sent to state prison—where our efforts to collect restitution follow.

The District Attorney's Restitution Unit assists the staff of the Workers' Compensation Fraud Unit in completing the appropriate paperwork and obtaining the correct court order necessary to forward to the Department of Corrections' Office of Victim Services and Restitution so that a portion (22%) of the inmate's wages and trust account deposit can be seized and forwarded to the victim in satisfaction of the restitution obligation. A very few defendants have had probation terminated or have completed prison sentences without completely paying off restitution. As to those individuals, the Deputy District Attorney assigned to the case obtains a civil judgment for the balance of the restitution (per Penal Code section 1214(b)), and forwards that document to the victim for filing with the appropriate County Recorder.

The defendants convicted as a result of Unit efforts are routinely told by their attorneys of the extraordinary efforts expended by Unit staff to correctly monitor and ensure compliance with

probationary terms. San Bernardino County judges have expressed their gratitude at receiving thorough and up-to-date probation review reports, as the information contained in the reports enables them to issue appropriate rulings and orders as to each defendant, without concern that something has "slipped through the cracks". The staff of the probation department is happy to be relieved of the responsibility of monitoring this group of probationers. And Unit Staff can be assured that through our efforts, the victims of our cases are receiving their due restitution and representation in court.

## **B. Fine Collection**

With the passage of Assembly Bill 749, the Legislature finally armed District Attorneys with the means to implement the legislative intent expressed in Labor Code section 3820. Per A.B. 749, (effective January 1, 2003), all funds collected from fines imposed as a result of convictions of Insurance Code section 1871.4 and Labor Code section 3700.5 were ordered deposited in the Workers' Compensation Fraud Account. Assembly Bill 749 also amended Labor Code section 3722 to permit the assessment of additional fines and penalties against uninsured employers, and directed that those funds be placed in the Uninsured Employer Fund. These two tools have enabled District Attorneys to begin directing substantial, stable funding into both the Workers' Compensation Fraud Account and the Uninsured Employer Fund.

After Labor Code section 3820 was enacted, Deputy District Attorneys involved in the prosecution of workers' compensation fraud statutes have found themselves "between a rock and a hard place". On the one hand, the "rock" was the legislative intent codified in that section—that funds used to combat workers' compensation insurance fraud are to come from the Fraud Account, and that those funds should partly be produced by the imposition of the penalties outlined in that section. On the other hand, the reality of the "hard place" so many occupy is the courtroom—and that the judges running those courtrooms and imposing criminal fines have the ability to direct the funds produced by the imposition of those fines. Unfortunately, many judges have seen fit to direct the fines collected into the state victim restitution account, which is used to assist and recompense crime victims as a group.

The passage of Assembly Bill 749 has seemingly removed the "hard place" from the lives of those deputies involved in fighting workers' compensation fraud. The magic word of "shall" in legislation means just that—and its use in the above-referenced instances removes from judges the discretion to direct fine funds collected from convictions from the named crimes anywhere but the respective funds designated. As the minimum criminal fine imposable for felony and misdemeanor convictions are two-hundred-dollars and one-hundred-dollars, respectively, and the fines are supposed to increase according to the severity of the criminal conduct involved in the case, one can safely assume that money "shall" steadily be available for use in funding anti-fraud efforts.

During the last fiscal year, the Lead Deputy has consciously evaluated each case to determine whether including a L.C. 3820 fine in the disposition of said case was appropriate. San Bernardino is a very conservative county, and the Lead Deputy determined that slowly integrating into plea agreements fines payable to the Fraud Account should be initially imposed upon fraudulent employers and providers. In the last fiscal year, the San Bernardino County District Attorney has included in the terms of plea agreements of three defendants the payment of \$10,000, \$2,500 and \$1,000 fines (respectively) to the Fraud

Account. The District Attorney anticipates and expects that fines payable to the Fraud Account will become de reguer as their inclusion in plea agreements becomes more commonplace.

Moreover, the amendment of Labor Code section 3722, authorizing an additional fine assessed on uninsured employers in an amount directly related to the scope of the fraud and the amount of risk imposed on employees unprotected by mandatory insurance, adds another hammer to the monetary arsenal now available to the District Attorney and judge. The District Attorney has filed only one case charging a violation of Labor Code section 3700.5 violations, and it has yet come to disposition stage. The District Attorney anticipates slowly integrating L.C. 3722 fines into L.C. 3700.5 dispositions in much the same way that we have begun integrating Fraud Account fines into cases involving Insurance and Penal Code violations.



## COUNTY PLAN PROGRAM STRATEGY

10. As of January 1, 2003, local District Attorneys have been authorized to utilize Workers' Compensation Insurance Fraud funds for the investigation and prosecution of an employer's willful failure to secure payment of workers' compensation insurance. Describe the county's efforts to address the "uninsured" employers problem.

In last years' grant application, the District Attorney was asked to outline his strategy for initiating and integrating prosecutions of Labor Code section 3700.5 investigations into the workings of his Workers' Compensation Fraud Prosecution Unit. The District Attorney proposed a two-pronged approach designed to address this problem, described as outreach and system integration. Unit Staff decided that the most critical component of approaching this problem was outreach because, although we had successfully prosecuted applicant, premium, and insider fraud for years, we had never tackled the problem of uninsured employers, much to the distress and criticism of the Applicant's Attorney's Association, the business owners we encountered during our "Employer's Seminars", political activists associated with labor unions, and staff of the Department of Labor. We pledged to direct our outreach efforts toward these groups. We also promised to integrate our Labor Code section 3700.5 prosecutions into the court system in a manner designed to maximize effect of those cases on the prosecuted with the aid of the judiciary. Implementation of this strategy has laid a successful foundation, leaving a great deal of work left to accomplish in the upcoming fiscal year.

### Outreach Efforts.

The significance of the problems posed by uninsured employers has been stressed during many of the outreach programs presented by the Unit's Lead Deputy since her assignment to the Unit in 1997. Anger and frustration with these law-breakers had been expressed by the law-abiding, fully insured small business owners forced to deal with an uneven economic playing field created by uninsured employers who fail to include the cost of workers' compensation insurance in the competitive job bidding process; employers involved in public works/prevaling wage construction projects administering projects fraught with subcontractors involved in fraudulent practices, violative of I.C. 11880/I.C. 11760, L.C. 3700.5, and/or Business and Professions Code section 17500; and insurers, dealing not only with the complaints of their clients but also watching their economic climate skewed and endangered by these scofflaws. The District Attorney's goal in enforcing the provisions of Labor Code section 3700.5 was clearly defined from the outset: We are not here to harass or negatively impact upon small business owners, but to keep small businesses healthy-- on an equal, competitive playing field-- while protecting both the employees of the businesses from uncompensated injuries and the owners from the effects of deceptive business practices.

During the last fiscal year, the Lead Deputy attempted "outreach" to the staff of the local (Orange County) Uninsured Employer's Fund. Her efforts were singularly unsuccessful. Notwithstanding several letters sent and telephone messages left, no return contact was received from the staff of that Department. This Department clearly presents the richest source of legitimate, provable L.C. 3700.5 referrals available to Unit Staff. Therefore, the Unit's Lead Deputy will perform additional and more aggressive efforts during the upcoming fiscal year.

Numerous referrals for potential prosecutorial targets were submitted by members of the Applicant's Attorneys Association. The Unit's Lead Deputy contacted the Program Director of the local association in September of 2002, and by the following month, found herself the featured speaker at the Association's meeting, which was also attended by the Association's state president. Several referrals were received that evening, and even more have been received in the nine months since. (That effort also resulted in the referral of two viable employer fraud cases.) The Unit's Lead Deputy will ask to speak to this group again in the fall of 2003; she also contemplates placing an ad in the Association's newsletter, requesting legitimate referrals.

The Unit's Senior Investigator made contact with the local Labor Board staff, and requested referrals from that entity. The staff of that agency indicated that they visit non-compliant employers monthly, inspect the work premises and serve notice of the employers' responsibility to secure workers' compensation insurance adequate to cover the needs of employees; they then follow up a month later with a surprise visit to adjudge compliance. The staff of that agency has enthusiastically embraced the idea of our participation in the second visits, and criminal cases filed by Unit Staff in conjunction with administrative violation notices issued by DOL staff.

The District Attorney's Office has also received numerous L.C. 3700.5 citizen complaint referrals from the Department of Insurance Fraud Division. Apparently, investigation of these complaints is being ceded to the local District Attorneys state-wide. Several of the complaints received have resulted in promising investigations, and one referral led to a filed misdemeanor complaint. The Unit's Lead Deputy is also confident that we will begin receiving complaints from the (newly-assigned) criminal investigator of the local Employment Development Department, who is in a unique position to evaluate the necessity of adequate workers' compensation insurance coverage by employers within his jurisdiction.

Finally, we intend to continue to solicit referrals through traditional business organizations. Utilizing the same outreach methods that have proven effective in years past, Unit Staff will contact members of local Chambers of Commerce and Better Business Bureaus, as well as specialized groups and chapters potentially affected by uninsured employers (e.g., Women in Construction) and inform them of the District Attorney's commitment to addressing this problem. We also expect that owners of core industries experiencing the problem of uninsured employers (particularly, members of the construction industry) will prove fruitful referral sources. These telephonic contacts will be followed-up with a mailing containing referral forms and literature related to workers' compensation fraud. These various contacts will commence in early fall, so that all of the potential referral sources are contacted and on-board by the end of the calendar year. We intend to publish pamphlets and posters

advertising both the criminal (Labor Code section 3700.5) and civil (Business and Professions Code section 17500) legal ramifications of acting as an employer without adequate workers' compensation insurance coverage, and papering the appropriate business locations with those publications.

#### Systemic Integration.

As indicated, the District Attorney has filed the first (of many) criminal complaints charging violations of Labor Code section 3700.5. The Unit's Lead Deputy has developed a plea structure similar to the one she developed to apply to those convicted of violations of the Insurance Code; it includes a longer-than-usual probationary period, fines to the state victim fund and the Fraud Account, agreement to monitoring and search terms as part of probation, etc. It is important to note that, when introducing a large number of new, similar prosecutions into the judicial system, it is important to anticipate and plan for the systemic effect of those prosecutions. Part of the groundwork to be accomplished early in this first year of L.C. 3700.5 prosecutions will be educating the San Bernardino judiciary regarding the problems caused by uninsured employers and the significant economic impact this problem has on business owners and employees (who, of course, are also voters!)